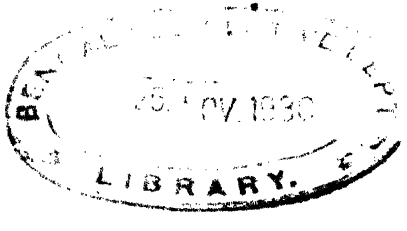
REPORTS
OF
INDIAN ELECTION PETITIONS

VOLUME I

1920

by

JAGAT NARAIN, B.A., LL.B., M.R.A.S.
ADVOCATE OF THE HIGH COURT OF
JUDICATURE AT ALLAHABAD



Allahabad
Allahabad Law Journal Press
1930

Table of Cases

REPORTED IN VOLUME I

THE REPORTS

THE PUNJAB LEGISLATIVE COUNCIL
MOHOMMEDAN RURAL
THE ATTOCK CASE

KHAN BAHADUR MALIK MUHAMMAD AMIN KHAN

Petitioner

versus

LIEUTENANT SIKANDER HAYAT KHAN
GHAFOOR KHAN } *Respondents*

A candidate cannot be penalised for the corrupt acts of another candidate under Rule 24 1 (*b*) of the Punjab Election Rules.

An oral deputation of one of his assistants by the Returning Officer to perform his duties as such, while he was away from the head-quarters, followed by a demy-officer letter to him, which however did not reach him before the expiry of the date fixed for nomination, and no attempt having been made to notify this deputation in way, was held to be insufficient deputation of his duties by the Returning Officer within the meaning of Regulation 3. Consequently a nomination paper presented to the said Assistant was held to be invalid for want of proper presentation to the Returning Officer.

Leave to withdraw a claim for the seat cannot be granted after the respondent has put in recriminatory charges.

An election court can enquire into the truth or falsity of election expenses filed by candidate.

There is no provision under which an election should be declared void on the ground that a false return of election expenses was filed by the respondent, but such an election could be avoided by a declaration, under Rule 23 (1) that the seat of an elected person is vacant by reason of ineligibility arising out of the application of Rule 5 (4).

The Commissioners are empowered to summon and examine of their own motion any person whose evidence appears to them to be material under Section 5 of the Indian Election Offences and Inquiries' Act 39 of 1920.

An election agent can also be a proposer.

A disabling provision should be strictly construed. Where the signatures of one Ghulam Hasan, who was a proposer of the Petitioner were obtained on the nomination paper of the Respondent No. 2, who was not a genuine candidate by fraud, and this led to the rejection of the nomination paper of the Petitioner, it was held that this amounted to fraud within the meaning of Schedule 4, Part I, Rule 2 of the Punjab Electoral Rules.

In the 1920 election for the Punjab Legislative Council, Lieutenant Sikander Hayat Khan was returned unopposed for the Attock (Mohommedan) constituency, the nomination paper of Khan Bahadur Malik Muhammad Amin Khan, dated November 4, 1920, and of Ghafoor Khan, dated November 8, 1920, being held invalid by the Returning Officer on the ground that one Ghulam Hassan, who was the proposer of the former, was also the seconder of the latter, this rendering both nomination papers invalid under Regulation 6 of Punjab Government Notification No. 9, dated July 31, 1920. The petitioner prayed that the election be declared void on the following grounds:—

1—that Respondent No. 1 was not duly nominated:

2—that the nomination of Respondent No. 2 was not valid or validly presented and, even if held to be otherwise valid, was obtained by fraud: and

3—that the Returning Officer was absent from his headquarters on November 8, 1920, which was the last day for the delivery of nomination papers, that by his absence the Petitioner was prevented from delivering other nomination papers, which he had ready for delivery to the Returning Officer before noon on that date, and that this irregularity on the part of the Returning Officer had materially affected the result of the election. The Petitioner claimed a declaration that he had been duly elected, and in recrimination, Respondent No. 1 urged that the petitioner had filed no accounts and had also published false statements in relation to his (Respondent No. 1's) personal character and conduct.

The main point in the case is the question of Ghafoor Khan's nomination. The first matter requiring discussion is whether that nomination is to be held to be no nomination at all because the nominee was a bogus candidate and the signature of Ghulam Hassan on the nomination paper was obtained by fraud, with the object of invalidating the nomination of the Petitioner, and so procuring the unopposed return of Respondent No. 1.

On facts it was held that respondent No. 2 was not a genuine candidate, that the signature of Ghulam Hassan was obtained by a false representation and that he never intended to second the nomination paper of Respondent No. 1, and therefore the right of the petitioner to stand for the Punjab Legislative Council was interfered with by fraud. It was further found that Respondent No. 2 was a party to this fraud, but it was found that Respondent No. 1 nor his election agent had anything to do with it.

Under the wording of Rule 42 1 (*b*), it would seem that, as a corrupt practice had been committed by a candidate, viz., who is

Respondent No. 2, the election of the returned candidate, who is Respondent No. 1, should be declared void. Inspite of the wording of the rule, we consider it impossible that the Legislature could have actually intended, when framing the rule, to let in an interpretation which would penalise an innocent candidate for the corrupt practice of another candidate. We, therefore, prefer to proceed under Rule 32 1 (*a*) and hold that the election of the returned candidate was procured or induced by a corrupt practice rendering the election void. In view of our finding on another issue, this discussion is perhaps unnecessary, but we thought it incumbent on us to point out the difficulties that may arise owing to the wording of Rule 42 1 (*b*).

We pass on to consider the matter of the alleged deputation of the performance of his duties as Returning Officer by the Returning Officer to the Revenue Assistant. Choudhri Sultan Ahmad, Deputy Commissioner was the Returning Officer for the constituency, but was unfortunately away on November 8, 1920, which was the last day for receipt of nomination papers. He left for Rawalpindi on the morning of the 5th and did not return till after 7 in the evening. According to his evidence, he had some time previously orally deputed his duties as Returning Officer to the Revenue Assistant, Choudhri Akber Ali, under Regulation 3 in Punjab Government Notification No. 9, dated July 31, 1920, and had on the day of his departure confirmed the same by a demi-official letter addressed to Choudhri Ali Akber. The fact of the deputation was unknown to anyone except the Deputy Commissioner and the Revenue Assistant, and no steps were taken to notify it in any way. Choudhri Ali Akber when he received the nomination paper of Ghafoor Khan on the 8th, had not received the demi-official letter.

Taking all the facts into consideration we are unable to hold that there was any proper deputation to Choudhri Ali Akber in accordance with Regulation 3. It follows, therefore, that Ghafoor Khan's nomination paper was not presented to the Returning Officer on due date and was therefore not a nomination paper that should have been considered at the scrutiny. Consequently the nomination paper of the Petitioner should not have been invalidated on the ground that his proposer had seconded another candidate and hence the election of the returned candidate would be void under Rule 42 1 (*c*), for the result of the election was obviously materially effected.

The Petitioner originally sought also a declaration that he had been duly elected. His counsel wished to withdraw this part of the petition, but as the respondent had put in recriminatory charges,

leave to withdraw was refused.

The counsel for Respondent No. 1 put in an application, supported by an affidavit sworn by the election agent of the Respondent No. 1, alleging that the Petitioner's return of election expenses was false, and that the receipts attached to the same for payment of petrol, were false or forged.

Arguments were heard on the question of admitting this evidence and the point was disposed off by an intermediate order, annexed to the report. It is clear that receipts were not given at the time of the purchase of petrol. We are unable to hold that these receipts in any way support the account put in by the petitioner. It is further proved that the election agent of the Petitioner Zamurrud Khan, did not keep such accounts of the election expenses as to satisfy the requirements of Schedule 2. We hold therefore that the Petitioner and his election agent have failed to lodge the return of election expenses as prescribed, and, though this is not a corrupt practice under the rules, and we have no power to avoid an election under Rule 5(4) of the said rules, the result would be rendered one or both of them ineligible for future election under Rule 5(4) of the said rules.

In view of the fact that the whole election procedure is new, that the accounts are not proved false in any material particular Government will no doubt consider whether it should not exercise the powers vested in it under proviso to Rule 5 and remove any disqualification that the petitioner or his election agent may have thereby incurred. We recommend the adoption of this course.

We therefore humbly advise His Excellency—That the election of Lieutenant Sikander Hayat Khan, be declared void.

That both Ghafoor Khan and Muhammad Ashraf have been proved guilty of undue influence by interfering with the right of the Petitioner to stand by means of fraud, this being a corrupt practice, as defined in Rule 2 of Part 1 of Schedule 4 of the Punjab Electoral rules as regards costs, Respondent No. 1 should pay to the Petitioner costs to the extent of Rs.1,000, and the remaining costs should be borne by the parties.

ANNEXTURE 1

The preliminary points are as follows:—

1. Should Petitioner be allowed to amend or amplify Paragraph 5 of his petition?

2. Was it essential that the nomination papers should be delivered to the Returning Officer on November 8, 1920 and on no other date?

3. Can an election agent be also a proposer?

Following Lahore case, it was held that if particulars which, in the opinion of the court were adequate, were stated in the petition, the court had full power to allow better particulars to be given subsequently, provided always that no new substantial charge was introduced, and that the respondent was safeguarded from being taken by surprise.

As regards the third point it is admitted that the election agent of Respondent is the same man who proposed this respondent for election in the nomination paper Ex-P-8. Mr. Barkat Ali for the petitioner referred to Regulation 6 read with Form 1 of the same regulation and pointed out that it was a clear inference from this that a candidate could not be his own proposer or seconder. He then proceeded to advance the proposition that a candidate and his election agent are one for the purposes of electoral rules and regulations, and from this argued that an election agent could not be the proposer or seconder of a candidate any more than the candidate himself. It appears to us to be a very far-fetched proposition, and in the absence of any direct or indirect enactment by the legislature prohibiting the proposer of the candidate from being his election agent or *vice versa*, we reject Mr. Barkat Ali's contention.

The third point presents more difficulty. The nomination paper objected to was delivered to the Returning Officer on November 4, 1920, and the question whether delivery on that day was a valid delivery depends upon the interpretation of the notification which runs:—

"A nomination paper shall not be valid unless it is delivered to the Returning Officer at his office before noon on the day preceding the date fixed under Regulation 4."

The date fixed in Regulation 4 was November 9 and was the date for the scrutiny of nominations.

Mr. Barkat Ali has argued that the plain meaning of Regulation 7 and of the note in Form 1 of the regulations is that the nomination paper must be delivered to the Returning Officer on the day so fixed and on no other day and before noon on that day. He lays stress on the use of the word "on" instead of the word "of" and refers us to the vernacular form in which the word used is "ko" " " and not "tak". He refers also to the circular letter of the Reforms Commissioner where the word "on" is again used and the presence of the Returning Officer considered advisable "on the forenoon of November 8" and to the English Law as in Halsbury, page 26, Volume 12, Paragraphs 533, 531, etc. Mr. Peiman in reply argues that as the objection was not raised before the Returning Officer under Regulation 11, it cannot be

raised now, and the decision of the Returning Officer on the point of presentation is meant to be final; that, if the regulation meant what the petitioner now contends it means, the regulation would have had the word "before noon" coming after the words "on the day Regulation 4"; that neither the Petitioner nor the Respondent nor the Returning Officer so understood the regulation; that the circular letters refers to the closing time of the nomination only; that the general policy of other provinces is to the contrary, and in a country of distances like India, the analogy of England in this respect does not apply. He refers to page 8, column 2 of the Indian Electoral Guide, and to Regulation 9 which lays down what should be done with a nomination paper received after the time prescribed and to the absence of any similar provision in the regulations for a nomination paper received before the time prescribed: lastly, he alludes to the certificate of delivery and registration by the Returning Officer in Form 1 of the regulations, which he argues, contemplates a delivery by post, which would be futile if the preventer of such a paper had to see that it got to the Returning Officer within certain hours.

The Government advocate argued that both interpretations were possible.

We are definitely of opinion that Rule 42 1(*c*) completely covers the contention raised for the respondent and that, where there was no balloting at all, but the returned candidate was declared duly nominated on a single nomination paper, the validity of which is called in question, the result of the election was materially affected and we have power to decide the point whether raised before the Returning Officer or not. Proceeding we consider both interpretations are possible of the regulation in question. We are not inclined to attach much weight on the use of the word "ko" in vernacular translation.

There is little relevency in Mr. Barkat Ali's reference to the Reform Commissioner's Circular letter: it would be specially advisable for the Returning Officer to be present on the forenoon of November 8 in order to see that nomination papers are not received after 12 o'clock and he is therefore enjoined accordingly, but we fail to see how it can be inferred from this special injunction that he need not be present on any of the preceding days.

Proceeding then to consider the next question as to the meaning of the regulation in its plain gramatical sense is or is not absolutely clear, we are again of opinion that both interpretations are possible. To give an illustration suppose there is an advertisement inviting tenders to be given before noon on a certain day, a tender received before the date would not ordinarily be rejected on that

ground, nor would persons making tenders ordinarily consider that they should not put them in before the day fixed. As regards the contention that "before" in the regulation qualifies only "noon" and not the rest of the paragraph, we see no reason, on a consideration of the wording alone, why the emphasis should be on the word "on". A natural reading of the regulation would not emphasize that word.

As regards the use of the word "ko" in the vernacular, we understand that the vernacular is merely a translation of the English form and, being so, we are not inclined to attach much weight to the argument based on it.

There is little relevency in Mr. Barkat Ali's reference to the Reforms Commissioner's letter: it would be specially advisable for the Returning Officer to be present on the forenoon of November 8, in order to see that nomination papers are not received after 12 o'clock and he is therefore enjoined accordingly, but we fail to see how it can be inferred from this special injunction that he need not be present on any of the preceding days.

Had the Indian legislature intended to follow the English law, it is hardly conceivable that this would not have been made clear beyond the possibility of a doubt.

After giving the matter our careful consideration we are of opinion that the language used in the regulation is ambiguous, and, as it is a disabling provision, it must not be strictly construed against the nominee, in accordance with well-established principles: generally, having regard to all rules and regulations referred to in the above discussion, we feel that we cannot allow the contention advanced.

ANNEXTURE 2

In the course of the evidence produced by the Respondent under Rule 40 by way of recrimination, he offered evidence to question the correctness of the Petitioner's return of election expenses and to show that some expenses actually incurred were not given in the returns, and that some items were falsely shown under heads other than those under which they were actually spent. This evidence was objected to on behalf of the petitioner, on the ground firstly, that a defective or a wrong statement was not included in the list of corrupt practices given in Schedule 4 and could not have the effect of avoiding an election, and, secondly, that, under Rule 40 the Respondent could only avail himself of such a plea as would have been open to the Petitioner, had he been a returned candidate. It was contended that as petition has to be presented within 14 days of the declaration of an election, while the state-

ment of expenses can be lodged at any time upto one month after the said declaration, it could not be open to the Respondent to give evidence attacking the correctness of the return of election expenses. The Petitioner's counsel adopted the position, in so many words, that an astute candidate would delay lodging the prescribed return until the 14 days' time limit had expired, and, by so doing defeat any attempt to attack him on any item shown in the said return. Mr. Petman eventually admitted that he could not press the point that he had the right under Rule 40 to produce evidence in question. He urged, however, that the Commissioners had the power to make an enquiry into the correctness of the accounts submitted by any candidate, as was clear from Rule 5(4), under which a candidate becomes ineligible for election for 5 years if the Commissioners find that he has lodged a return which was false in any material particular. He urged that Rule 5(4) would be rendered inoperative if evidence to show the falsity of the accounts submitted by any party was not allowed.

There is no specific provision under which we can report that an election should be declared void on the ground that a false return of election expenses has been made, but such an election could be avoided by a declaration, under Rule 23(1), that the seat of an elected person is vacant by reason of ineligibility arising out of the application of Rule 5(4). Unless the question of falsity of return is enquired into by this Commission, the only means by which the provisions of Rule 5(4) could become effective is an enquiry by a Magistrate in a judicial proceeding. We do not think that it would be right for us to leave such a matter to await the possible inauguration of judicial proceeding before a Magistrate, and we look upon it as our duty to inquire into the question of this return: this question has come before us in the exercise of our powers under Section 34(2) (*a*) under which all applications and proceedings in connection with the trial of a petition are to be dealt with and held by us, and we find that under Section 5 of the Indian Election Offences and Inquiries' Act 39 of 1920 we are empowered to summon and examine of our own motion any person whose evidence appears to be material.

F. W. KENNAWAY, *I. C. S.*
ABDUL QADIR, *Bar-at Law*
DALIP SINGH, *Bar-at Law*

The regulation referred to in the Commissioners report. "The Deputy Commissioner may delegate to a gazetted officer the performance of any duty imposed on him by these regulations."

UNITED PROVINCES LEGISLATIVE COUNCIL
BALLIA DISTRICT N.M.R.

GOURI SHANKER PRASAD (*Petitioner*)

versus

1. THAKUR HANUMAN SINGH
2. RAJA RAJENDRA PRATAP NARAIN DEVA

(*Respondents*)

Only one election agent can be appointed by a candidate and the appointment of more than one election agent invalidates the nomination.

In order that there can be a valid revocation of the appointment of an election agent, it is necessary that there should have been a valid appointment.

Nomination is the work of voters and not of any official or Attesting Officer. Candidates are to be deemed nominated on the day their nomination papers are attested, and the fact that a subsequent date is fixed for the scrutiny of such nomination papers will not leave the nomination papers incomplete till that date.

The improper admission of a nomination paper is a material irregularity which materially affects the result of the election.

Respondent No. 2 was duly served, but was absent throughout the proceedings before tribunal. Proceedings as regards Respondent No. 2 are, therefore, *ex parte*.

On behalf of the Petitioner it was pleaded that on October 18, 1920, the Petitioner and the Respondents were nominated as candidates, but on that date neither Respondent made a valid appointment of his election agent as required by Rule 11, Clause 2 of the Electoral rules. He further stated that although an attempt was made by the Respondents to repair the mistake made by them at a later date, they were not duly nominated under Rule 11, Clause 2 of the Electoral rules, because they had failed by October 18, 1920, to make valid appointments of their respective election agents. It appears that the Returning Officer accepted the nominations of the two respondents as well as of the Petitioner as being duly made and ordered a poll to be held. As a result of the polling the Respondent No. 1 was declared elected. The Petitioner asks that the election be set aside and he himself be declared duly elected on the ground that was the only candidate who was duly nominated under Rule 11, Clause 2 of the Electoral rules. The Respondent No. 1 opposed the contention of the Petitioner and also made recriminatory charges against the Petitioner. The following issues were framed:—

1. Does the decision of the Returning Officer (regarding the validity of the nomination papers of the Respondents), bind this court?

2. Whether the declarations made by Respondents 1 and 2 on October 18, 1920, purporting to appoint in each case several election agents are invalid?

3. If so, whether the subsequent revocations made by Respondents Nos. 1 and 2 can validate the original declarations?

4. Were the 26 persons appointed by Respondent 1 on October 18, 1920, not election agents within the meaning of that term as defined by Rule 2, Clause (*d*)?

5. If issues 1, 2 and 3 are decided against the Respondents, should the petitioner have been declared to be duly elected?

6. Would the facts alleged in the recrimination, if true, invalidate the Petitioner's election?

7. If the declarations of Respondents 1 and 2 purporting to appoint election agents are found to be invalid, was the result of the election materially affected thereby?

8. Was the declaration made by Respondent No. 1, on October 29, 1920, a valid appointment of an election agent?

9. Did the petitioner or his agent, Rameshwar Sharma, publish the leaflet Ex. L-1, as alleged by Respondent No. 1 and does it constitute false statements within the meaning of Schedule 4, Part 1, Rule 4?

Issue 1 has been struck off in consequence of the statement made by the counsel for the Respondent No. 1.

Issue 2—Whether the declarations made by Respondents Nos. 1 and 2 on October 18, 1920, purporting to appoint in each case several election agents are invalid?

It is admitted that on October 18, each of the Respondents filed documents purporting to appoint in the case of Respondent No. 1, 26 persons and in the case of Respondent No. 2, 18 persons as election agents. October 18 was fixed by the Government for the attestation of nomination papers. It is argued on behalf of the Petitioner that only one election agent can be appointed and therefore an appointment of more than one is invalid appointment.

In our opinion the Petitioner's interpretation of the law is correct, and the wording of Rule 12, Clause 2 of the Electoral rules contemplates the appointment of only one election agent and not more. The rule says;—"On or before the date on which a candidate is nominated the candidate shall make in writing and sign a declaration appointing either himself or some other person" as his election agent. The wording of the rule shows clearly that the candidate, if he appoints himself as his own election agent,

cannot appoint any one else. If the contention of the Respondent was accepted that the words "some other person" should mean "some other persons", it would be possible for the candidate to appoint two or more persons as his election agents, although it would be impossible for him to appoint himself and one other person to be his election agents. This appears to be an absurd interpretation of the rule. "Either himself or some other person" must mean that only one person is to be appointed.

The definition of an election agent in Rule 2 of the Electoral rules is as follows:—"Election agent means the person appointed under these rules by a candidate as his agent for an election". Throughout the rules wherever an election agent is spoken of it is invariably in the singular. On the other hand, the rules speak of other agents in the plural: for instance Schedule 3, Clause 2(*c*) is as follows:—"The travelling expenses and any other expenses incurred by the candidate or his election agent on account of agents (including the election agent) clerks, or messengers."

We, find, therefore, that only one election agent can be appointed.

Issue 4—We find that the 26 persons appointed by Respondent No. 1 on October 18 were not election agents at all within the meaning of the term as defined by Rule 2, Clause (*d*). Only one man can be appointed an election agent.

Issue 3—On October 29, Respondents Nos. 1 and 2 filed documents purporting to revoke all but one of the appointments made by each of them respectively on October 18, and it is argued for Respondent No. 1 that the result of this action was that the one man in each case whose appointment was not revoked is to be regarded as the election agent.

It is only possible in our opinion to make a valid revocation where the original appointment was validly made. In the present case we have held that Respondents Nos. 1 and 2 failed to make valid appointments of election agent as required by Rule 11, Clause 2, and therefore it was impossible for them to make any valid revocation. Rule 16 of the Electoral rules, which speaks of revocation, lays down that after revocation another election agent must be forthwith appointed as a substitute. Revocation therefore is preliminary to substitution. In the present case, however, a number of appointments were set aside and there was no intention of making substitutions in the Rule 11, Clause 2. Issue decided in favour of the Petitioner.

Issue 8—It is argued on behalf of the Respondent No. 1 that the appointment of an election agent could be made any time upto November 30, the date fixed for scrutiny of the nomination papers

by the Returning Officer and therefore it was possible for the Respondent No. 1 to make an appointment of an election agent at any time upto November 30.

We do not accept this interpretation of the rules. It is laid down that nomination papers were to be attested on October 18, 1920, and on that day the nomination paper had to be complete. Nomination is the work of voters and not of any Official or Attesting Officer. October 18 was the date by which the nomination paper had to be completed. The mere fact that these nomination papers were to be examined at a subsequent date does not allow the nomination paper to be completed at any date subsequent to October 18. In our opinion the candidates were actually nominated on October 18, the date when their nomination papers were duly attested, and it was necessary for the declaration appointing an election agent to be made on or before October 18 and not afterwards. Issue decided in favour of the petitioner.

Issue 7—Under Rule 42, Clause 1(*c*) the commissioners have to see whether the result of the election has been materially effected by any non-compliance with the provisions of the Act or the rules or regulations made thereunder. In the present case we have held that the provisions of Rule 11, Clause 2, have not been complied with. The rule lays down that no candidate shall be deemed to be duly nominated unless he has made a proper declaration appointing an election agent and no candidate can be elected unless duly nominated. There has been therefore an irregularity in the present case which has materially affected the result of the election.

Issue 5—We find that the petitioner was the only person who was duly nominated and therefore should have been declared duly elected without the holding of a poll.

Issues 6 and 9—These issues relate to recriminatory charges. A leaflet Ex. L-1 was admitted by the Petitioner as having been published by him. The said leaflet contained among others two allegations (1) that the Respondent No. 1 spent a huge sum of money in litigation against tenants at a time when serious floods had caused havoc among them and (2) that the Respondent No. 1 introduced the sale of young cows in a fair held in Dumraon estate of which he was the manager. The Commissioners held that "the two accusations were certainly false, and had no basis of truth in them," and further that the Petitioner "took no reasonable precautions to satisfy himself of the truth of the allegations made in that document," and that "therefore he had no reasonable grounds to believe that the statements made in Ex. L-1 were true, or for not believing that they were false". It was also held that the state-

ments, if believed would prejudice the Respondent No. 1 in the minds of the electors of Ballia.

As a result of our findings we report that the Respondent No. 1 has not been duly elected. We also find that the Petitioner is guilty of corrupt practice as defined by Schedule 4, Part 1, Paragraph 4, and is therefore debarred from being elected himself. We order that the parties shall pay their own costs.

Under Rule 45 of the Electoral rules we find that it has been proved that the Petitioner has committed a corrupt practice as defined in Schedule 4, Part 1, Paragraph 4, and we do not recommend that he be exempted from any disqualification he may have incurred on this account under the rules.

Proceedings against Respondent No. 2 were *ex parte*. We report that he was not duly nominated.

F. B. SHERRING
SEETLA PRASAD BAJPAI
KRISHNA KUMAR

UNITED PROVINCES LEGISLATIVE COUNCIL
BASTI MOHOMMEDAN RURAL

SHANKI ALI (*Petitioner*)

versus

MUNSHI ABDUL HAKIM (*Respondent*)

It is not necessary that the declaration as to the appointment of an election agent should made or attested before an attesting officer.

A petition will lie against an order of the Returning Officer rejecting a nomination paper.

The petitioner on October 18 presented before the Returning Officer of Basti a declaration appointing himself as his election agent for the Muhammedan Rural constituency of Basti.

On October 30, Munshi Abdul Hakim, the rival candidate, presented an objection to the effect that the declaration had not been made and signed by the Petitioner in the presence of the Attesting Officer. The Returning Officer found that the declaration made by the Petitioner was invalid, and therefore declared that the nomination of the Petitioner was invalid. On the same date, he declared that the Respondent, being the only candidate was duly elected as by the decision of the objection of Munshi Abdul Hakim the nomination of the Petitioner had been declared invalid, leaving Munshi Abdul Hakim as the only candidate.

The following issues were framed:—

1. Is it necessary that the signature should be made in the presence of the Attesting Officer in order to make the declaration valid?

2. Does not an election petition lie against the order of the Returning Officer (rejecting a nomination paper)?

3. Is not the Respondent liable for costs, if the petition is decided against him?

The word "declaration" according to the Respondent means that there must be some one to receive the declaration. A declaration presupposes two persons: one person making the declaration and another person receiving it, and therefore, a declaration must be made in the presence of some one. It follows, therefore, that both the signatures on the declaration and the writing on the declaration should have been made in the presence of the Attesting Officer. It is further argued that unless this is done, the declarant cannot be held liable. It is possible that the signature may be repudiated subsequently and the Returning Officer or Attesting Officer can only be satisfied when the signature has been actually made in his presence.

We do not agree with this reasoning or with the interpretation suggested by the Respondent. The rule says nothing at all as to any necessity for the declaration to be signed in the presence of any one. If this had been considered necessary, the rule would have undoubtedly have said so explicitly. In the absence of any such requirement in the rule, the Petitioner cannot be held bound to have made his signature in the presence of the Attesting Officer.

There appears to be no force in the argument that unless the signature is made in the presence of the Attesting Officer the candidate cannot be legally bound by the document. If the candidate has presented a declaration purporting to be signed by himself, which, as a matter of fact, is found, subsequently not to have been so signed, the candidate will undoubtedly be liable to punishment under the Criminal Law. It is untrue, therefore, to say that the candidate will not be bound by a declaration written and signed otherwise than in the presence of the Attesting Officer.

It is also untrue to say that the Attesting Officer can only be satisfied of the genuineness of the signature if it has been in his presence, when the declaration has been filed by a candidate, the presumption is that that candidate asserts that the signature on the declaration is his own, and the Attesting Officer will accept this position until some other person interested made an objection. Issue decided in favour of the Petitioner.

Issue 2—Rule 42, Clause (*c*) has been referred to by the Respondent. It is however admitted by him that the Electoral

rules are rules made under the Act referred to in Rule 42, Clause (*c*). In the present case the Petitioner alleges that Rule 11, Clause 2 of the Electoral rules, has not been properly complied with. It is admitted by the Respondent that if Ex-1 (declaration made by the Petitioner) was a valid declaration, its non-acceptance by the Returning Officer was a non-compliance with the rules. In the face of this admission it is not possible for the Respondent to press his argument in regard to his issue. We decide this issue against the Respondent and in favour of the Petitioner.

Issue 3—It is clear that the Respondent placed his argument before the Returning Officer in support of his objection and the Returning Officer made his decision with reference to that objection. The proceedings were initiated by the objection of the Respondent and not by the Returning Officer himself. We decide this issue in favour of the Petitioner.

The petition is decided in favour of the Petitioner and against the Respondent who will pay Rs.200 as costs to the Petitioner.

F. B. SHERRING
SITLA PERSHAD BAJPAI
C. H. B. KENDALL

BENGAL LEGISLATIVE COUNCIL
BURHANPORE N.M.R.

BABU ANANDA PRASAD SANYAL (*Petitioner*)

versus

BABU SURENDRA NARAIN SINGH (*Respondent*)

The rules provide for the filing of an election petition by a voter and a petition cannot be rejected on the ground that it has been filed 'benami' at the instant of a candidate.

The election Commissioners have no power to reject a petition on the ground of vagueness after it has been admitted by the Governor.

Issue No. 5—Is there any legal bar to the maintainability of the petition?

We can find no legal bar to the maintainability of the petition. It is urged that the petition is a 'benami' one, and that really it has been brought at the instance of Ramain Babu, and should be thrown out. But the rules provide for the filing of a petition by an elector, and we see no force in this objection. It is also urged at the outset that the petition should be rejected on account of its undoubted vagueness, but we were doubtful as to our power to do this, once it had been accepted by the Governor. We requested the Petitioner, however, to furnish further particulars as the

petition, as it stood, was one which no man could be expected to meet, and this was done within the time allowed by us.

Various allegations of undue influence, treating, etc. were made in petition, but the evidence on all the charges was disbelieved. Petition rejected with costs which were fixed at Rs.1,200.

G. MUMFORD
B. L. BANERJI
RADHARAMAN MUKERJI

BEHAR AND ORISSA LEGISLATIVE COUNCIL
BHAGALPORE NORTH NON MOHOMMEDAN RURAL

BABU VISHVANATH JHA (*Petitioner*)

versus

SWAMI VIDYANANDA *alias* BISHVABARAN PRASAD (*Respondent*)

The jurisdiction of the Election tribunal is defined by the Election Rules.

The election court can only consider the question of personal, and not of material disqualifications. The jurisdiction conferred on the Election court is necessarily limited by the definite provisions regarding the finality of the orders of the Returning Officer. The election court is therefore precluded from enquiring into the question of the Respondent's possession of the qualification which entitles him to be entered in the electoral roll.

The first ground on which the election of the Respondent is assailed is "that the Respondent is not a voter and was as such ineligible for election." Now Section 6 (1) (*a*) of the Election Rules lays down that no person shall be eligible for election unless his name is registered on the electoral roll of the constituency or of any other constituency in the Province. The Respondent is admittedly registered on the electoral roll of the constituency of Saran within this province, but the form of Petitioner's argument before us was that the Respondent had been wrongly so registered. There was no suggestion of any failure to comply with the formal procedure enjoined by the rules and regulations regarding the preparation of the electoral roll in question and its revision by the Revising Authority. The contention was that the Respondent had been wrongly registered because he did not possess the material qualifications specified in the second schedule of the rules. Now Rule 9(3) provides that the orders made by the Revising Authority shall be final. It was argued however on the petitioner's behalf that under the provisions of Rule 42 this court has jurisdiction to enquire into

and decide the question whether the Respondent possessed the qualifications especified in the Schedule. Reference was also made to the English Law upon the point, and to the decision of the Commissioners in the matter of an election petition by Babu Sashi Bhushan Konar printed at page 5 of the Behar and Orrissa Gazette Extraordinary, dated January 14, 1921 (The Purnea Case).

It was also pointed out that under Rule 9(1) the Petitioner, not being a voter of the Saran constituency, was precluded from raising any objection to the inclusion of the Respondent's name before the Revising Authority.

Upon the last point all that we need say is that we presume that the legislature contemplated that sufficient safeguards would be provided by confining the power of objection to the voters of the constituency. With the Law of England we are not concerned since our jurisdiction is defined by the Election Rules. We may however point out that even under that law an Election Court upon scrutiny will consider only questions of personal and not of material disqualification. The disqualification alleged before us is of the latter description. Rule 42 no doubt provides *inter alia* that if in the opinion of the Commissioners the result of the election has been materially effected by any non-compliance with the provisions of the Act or the rules and regulations made thereunder, the election of the returned candidate would be void. But the jurisdiction hereby granted is necessarily limited by the definite provisions of Rule 9 (3) regarding the finality of the order of the Revising Officer, and we are satisfied that under this rule we are precluded from enquiring into the question of the Respondent's possession of the necessary qualifications as a voter. We are convinced in this view by the conviction that the legislature cannot have contemplated the provisions of the cumbrous and elaborate procedure of an election commission to determine the simple question of fact concerning the possession of such qualifications. Accordingly we declined to hear evidence on this point.

The petition was accordingly contested only on the ground of the allegations of corrupt practice by the Respondent. The allegations on that count were all disbelieved in facts. The Commissioners regarded the petition as "an impudent and medacious attempt to defeat the free choice of electors." The Respondent was held entitled to recover from the Petitioner his costs which were fixed at Rs.700.

DOUGLAS HOLLINSHED KINGSFORD
MUHAMMAD ZAHUR
RAI BAHADUR NARENDR/
KRISHNA DATTA

CENTRAL PROVINCES LEGISLATIVE COUNCIL
BERAR WEST NON-MOHOMMEDAN URBAN

S. W. KELKAR (*Petitioner*)

versus

1. RAO SAHEB R. V. MAHAJANI
2. A. V. KHARE } (*Respondents*)

Commissioners have no power to go behind the order of the Governor admitting a petition, or to send back the petition to him on the ground that the petition is not in proper form and liable to be rejected on that ground.

Under the C. P. Election Rules the Governor has power to reject a petition only on the ground that the required security has not been deposited.

When the words of a statute are clear, the ordinary rule of interpretation is to take them in their simple and literal sense. When there is some ambiguity, a common sense and reasonable compliance with the spirit of the statute should be sufficient.

The right to vote is a personal right and all idea of agency in connection therewith must be excluded unless otherwise expressly provided. The right is not capable of being transferred or exercised through agents. What is required by the rules to be done by the proposer or by seconder or by the candidate cannot be permitted to be done by his agents unless there is a clear authority for it.

Regulations differ from province to province, and those of one province cannot serve as a guide for the interpretation of the regulation of another province, when the latter are clear.

There is a great difference in the meaning of the expression "sending" and of "despatching" or "posting". Despatching and posting are mechanical acts which should not be confounded with the act of sending. The mechanical act can be done by anybody, even by a servant. The sending of a letter is an intelligent act and it has to be performed by the person sending.

The nomination papers of the two candidates were sent by post to the Commissioner, who was Returning Officer of the constituency. The officer on scrutinising Mr. Khare's nomination paper was of opinion that it was on certain grounds invalid, and he therefore rejected it. He found Rao Saheb Mahajani's nomination paper to be in order, and there being thus only one candidate left for the seat, the Returning Officer declared the Respondent No. 1 as being duly elected.

To the petition there was only one respondent cited, and he was

Rao Saheb Mahajani. Mr. Khare was on his own application subsequently joined as correspondent to these proceedings before us. The petitioner urged that Mr. Khare's nomination paper was perfectly valid and was wrongly rejected by the Returning Officer. He attacked the election of the Respondent No. 1 on the ground that he was not under the rules eligible for election and that his nomination paper was not in order. He therefore prayed that that election of the Respondent No. 1 should be declared void and that the Respondent No. 2 should be declared duly elected.

At the outset, a preliminary objection was taken on behalf of the Respondent No. 1 that the election petition was not in order and was liable to be dismissed by the Governor. The ground urged was that the Petitioner should have originally joined Mr. Khare as a Respondent to the petition as required by Rule 27. The learned pleader for the Respondent No. 1 therefore requested us that the point be referred to the Governor for orders, and to keep the enquiry into the petition pending till the final orders were received.

We are of opinion that there was no force in the objection and that it was quite unnecessary to return the election petition to the Governor and to keep the present proceedings pending. In order to understand our reasons for overruling the objection, a reference to rules cited for the Respondent No. 1 is necessary. There are Rules Nos. 27, 28 and 28(1) of the Berar Electoral Rules, as published in the Central Provinces Extraordinary Gazette of August 5, 1920. Rule 27 lays down that the Petitioner, if he claims a declaration that a certain candidate has been elected, shall join as Respondents all other candidates who were nominated at the election. Rule 28 requires a deposit of security for costs by the Petitioner. Rule 29(1) runs as follows:—

"If the provisions of the Rule 27 are not complied with, the Governor shall dismiss the petition."

It was thus contended for the Respondent No. 1 that, as the Petitioner in his petition claimed that Mr. Khare had been duly elected, he was under Rule 27 bound to join him as a Respondent and his not having done so, the petition was liable to be dismissed.

To us it appears that the figure 27 mentioned in Rule 29(1) was a misprint for 28. This will be apparent, if we compare these rules with their corresponding draft rules published in the Central Provinces Gazette of July 10, last and also with the corresponding rules for the Central Provinces. The Central Provinces rules corresponding to 27, 28 and 29 are respectively 32, 33 and 34. The wording of these rules is identical. Under Rule 34(1) of the Central Provinces rules, the election petition is liable for dismissal, only if the provisions of Rule 33 are not complied with.

In Rule 34(1) no mention whatever is made of Rule 32.

Similarly, in the draft rules corresponding numbers were 26, 27 and 28. In Rule 28(1) of the draft rules, mention is made of Rule 27 and not of 26. It therefore appears that when rules were finally passed, they were renumbered and that through inadvertance the original figure of 27 appearing in the last rule was left uncorrected.

This will show that the Governor has been given power to dismiss an election petition only in case the required security for costs is not deposited. The petition is not liable to be dismissed for non-joinder of any party.

Even assuming that figure 27 as given in Rule 29(1) is not a misprint for 28, and even assuming that the petition was liable to be dismissed by the Governor, the Commissioners have no power to return it. They could not go behind their own appointment and refer back the petition to the Governor, on the ground that it was not in proper form and was therefore liable to be dismissed. Moreover, there is a distinct statement by the Governor in order appointing the present Commission that the Petitioner had fully complied with the rules in this behalf. On these grounds we overruled the objection.

In order to understand the grounds on which the validity of Mr. Khare's nomination paper is questioned, it is necessary to state how it was prepared and how it was sent to the Returning Officer. The proposer, the seconder and the candidate all three appeared before the District Judge on October 21, 1920, and made their signatures on it in his presence. They requested the District Judge to endorse on the nomination paper a certificate that they had signed in his presence, and that they were electors in the constituency as required by Regulation 2(2) under Rule 12. The District Judge made an endorsement on the nomination paper to the effect that the proposer, the seconder and the candidate had signed it in his presence, but as regards the second part of the certificate he told them that he could not give it, as the final Electoral rolls for the constituency were not in his office. Mr. Khare then took the nomination paper to the Deputy Commissioner, who endorsed on it a certificate that the candidate, the proper and the seconder were electors in the constituency. This nomination paper remained with Mr. Khare and he sent it on through post to the Returning Officer with a covering letter from him on October 23, 1920. It was also accompanied by a declaration appointing himself as his election agent. That declaration was in a plain paper and was not stamped. In the covering letter Mr. Khare wrote to the Returning Officer that according to his view, the declaration did

not require any stamp, but that if it did require any, an intimation might be sent to him so as to enable him to supply it.

The following points were fixed for determination:—

1. Were the two certificates on the nomination paper of Mr. Khare obtained under circumstances alleged by the Petitioner?

2. Are the two certificates valid under the Regulation 2(2), made under Rule 12?

3. (*a*) Was the nomination paper of Mr. Khare sent through post by him at the instance and under instructions of the Petitioner or the seconder or both as alleged?

(*b*) If so, was such sending by Mr. Khare valid and sufficient?

4. What is the requirement of Regulation 2 with regard to the sending of the nomination paper by post?

5. Did the declaration of election agent by Mr. Khare require to be on a stamp paper, and if so, is the nomination paper rendered void for want of it? Is this declaration of appointment also void, because of its not mentioning the constituency?

6. Is the nomination paper of Mr. Khare, if otherwise valid, rendered void by reason of his sending a letter along with it?

7. Are the defects in the nomination paper of Mr. Khare trivial and as such will not vitiate his nomination paper?

8. (*a*) Is the document filed by Rao Saheb Mahajani a declaration of appointment of an election agent as required by Rule 10(2)?

(*b*) Is the declaration of appointment of election agent by Rao Saheb Mahajani invalid for reasons given by the petitioner.

As regards the petitioner's allegations that Mr. Khare was authorised by the proposer and the seconder to get the second certificate from the Deputy Commissioner to do all that was necessary for the completing the nomination paper and to send it by post on their behalf to the Returning Officer, we have the affidavits of the petitioner and the Respondent No. 2. No counter affidavit has been filed by the Respondent No. 1. It must therefore, for the purposes of these proceedings, be taken that both Mr. Cama and Mr. Kelkar had asked Mr. Khare to go to the Deputy Commissioner on their behalf. Mr. Cama had asked Mr. Khare to do all that was necessary for the completion of the nomination form. Both Mr. Cama and Mr. Kelkar were engaged on other work and so they asked Mr. Khare to do the needful. These facts have been substantiated by the affidavits. This disposes off issues 1 and 3(*a*).

Regulation 1 describes how nomination is to be made by means of a nomination paper, which is to be subscribed by two electors in

the constituency as proposer and seconder, the candidate himself signing it in token of his having assented to his nomination. Regulation 2 is as follows:—

"2. (1) Save as provided in Clause (2) every nomination paper shall be presented to the Returning Officer at his head-quarters office by the proposer and seconder after the republication of the roll and before the date appointed by Government for the scrutiny of nomination papers. Provided that the candidate has signed the nomination paper in token of assent, he need not attend before the Returning Officer.

(2) A candidate may be nominated by a nomination paper sent by post so as to reach the Returning Officer before the expiry of the period aforesaid. The proposer and seconder shall append to such nomination paper a certificate from a Gazetted, revenue or judicial officer, that they have signed the paper in his presence and that they are electors in the constituency."

It was very earnestly represented to us on behalf of the Petitioner that the election rules should be interpreted liberally, and that a natural and common sense interpretation should be put on them, specially in view of the fact that the new Reformed Councils affected a large number of electors, a very large majority of whom were not at all experienced in election matters. It was urged that the framers of the rules could never have expected a strict, tight, and literal compliance with them, and that all what they wanted was a common sense and reasonable compliance with their spirit, as the rules had to be interpreted by and followed by ordinary common villagers. There is undoubtedly considerable force in this argument and we are in general agreement with it. At the same time, we cannot condone or overlook any breach of or non-compliance with an express rule, the effect of which would be to substantially offend the wording and the spirit thereof. When the words are perfectly clear, the ordinary rule for the interpretation of statutes is to take them in their simple and literal sense.

The right to vote and to elect is a personal and individual right and all idea of agency therewith must be excluded, unless otherwise expressly permitted. The right is not capable of being transferred or exercised through agents. The general principle, that whatever one is entitled or required to do can be done by his duly appointed agent, has therefore no application to the exercise of the right conferred by the Government. An agent may be appointed for the purpose of executing any deed, or making any contract, or doing any other act on behalf of the principle, which the principle might himself execute, make, or do; except for the purpose of exercising a power or authority conferred, or of per-

forming a duty imposed, on the principal personally, the exercise of which involves discretion, or skill, or for the purpose of doing an act which the principle is required by or pursuant to any statute, to do in his own proper person. "The exercise of the right to vote and to elect or to stand as a candidate is a personal and individual right and it cannot be delegated. What is required under the rules to be done by the proposer, or by the seconder, or by the candidate, or by an elector cannot be permitted to be done by his agent: unless there is clear authority for it. This we consider as being the principle of the whole scheme of elections.

Regulation 2(1) prescribes that the nomination paper should be presented to the Returning Officer by the proposer and the seconder and we do not think that it could ever be the intention of the framers that this duty should be done through agents. Though the words "in person" or "themselves" are not to be found in the regulation, it could not be said that the proposer and the seconder could employ an agent and could do the presentation through him. An elector cannot give his vote through an agent, except in certain specified cases in which it is expressly permitted, the nomination paper has to be transmitted to the Returning Officer personally by the proposer and seconder. If they cannot personally go, permission is given to them to send it to the Returning Officer through post on the observance of certain procedure.

We have quoted at length Regulation 2. It consists of 2 clauses; the first sentence of the second clause is in the passive form and is silent as to by whom the nomination paper is to be sent. It is therefore contended for the Petitioner that the nomination paper could be sent by the candidate himself and that it was not necessary for its validity that it should be sent only by the proposer and the seconder. According to the Petitioner's learned pleader, the absence of the subject in the first sentence was to indicate that the nomination paper could be sent even by a total stranger. The two clauses constitute one rule of procedure, the second clause being merely a proviso to the first. The principle and the primary mode, by which the nomination paper was to be prepared and transmitted to the Returning Officer, is prescribed by the first clause, an exception to it being given in the second. The second clause merely gives an exception and permits a departure in procedure from that laid down in Clause (1), inasmuch as it permits the sending of the nomination paper through post. The two clauses are to be read together and on reading them we come to the conclusion that the duty of transmitting the nomination paper to the Returning Officer has been cast upon the

proposer and the seconder. They are to either personally present it to the Returning Officer at his headquarters or to send it through post. The very second sentence in Sub-clause (2) would show that the whole work in connection with the nomination paper and in connection with its transmission to the Returning Officer was to be done by the proposer and the seconder and that a candidate was to have no hand in it, except to give assent by signing the nomination paper.

Our attention has been drawn to the rules framed for certain other provinces, which permit the presentation of the nomination paper by the candidate himself, and we are therefore asked to hold that the taking of a part by the candidate could not have been objected to by the framers of the Central Provinces and Berar Regulations. It has to be mentioned that regulations differ from province to province, and those of other provinces cannot therefore guide us in the interpretation of our own, when these are clear. It is worth mentioning that in the Punjab it is not necessary that the person who delivers the nomination paper should be either the candidate, or his proposer, or seconder and that it could be delivered even by a mere stranger. Different circumstances prevail in different provinces and that probably accounts for the necessity of prescribing different procedure for them. When a nomination paper has to be delivered by the candidate or by his proposer or seconder, its presentation by a stranger is invalid. See Monks *v.* Jackson (1 C. P. D. 683). Because in the Punjab, the delivery of a nomination paper by a stranger is not considered objectionable, it would not follow that its presentation by a stranger in the Central Provinces or in Berar should be considered as valid. Similarly, because in certain other provinces the presentation of a nomination paper is permitted to be made by the candidate, it does not follow that it could be made by the candidate in our province, when our rules do not permit this to be done. It is not possible for us to say why in Berar and in Central Provinces the presentation of a nomination paper to the Returning Officer was required to be made by the proposer and the seconder, and why it was not permitted to be made by the candidate himself, as in Behar and Orissa, or by a stranger as in the Punjab. But if we could hazard a guess, the objection of the framers of the regulations for the Central Provinces appears to have been to keep the whole thing in connection with the nomination in the hands of the proposer and the seconder, uninfluenced by the candidate, who was to remain in the back ground. The object was apparently to give a free choice to the proposer and the seconder and to give them liberty of changing their minds even at the last moment.

In the present case the nomination paper was in fact sent by Mr. Khare. It is no doubt true that he was directed by the proposer and the seconder to send it but as we have already observed, the duty could not be delegated. It was not a mere mechanical act which was done by Mr. Khare. A separate letter from him was sent along with the nomination paper and its wording would show that he was the real sender. In that letter no mention whatsoever was made that Mr. Khare was forwarding the nomination paper on behalf of the proposer and the seconder, or that he was acting as their agent and on their behalf. He purported to send the nomination papers himself. The intelligent part of sending the nomination paper was done by him. It seems necessary to point out that there is a great difference in the meanings of the expression "sending" and of "despatching"; or "posting". Despatching and posting in the post-box is a mechanical act which should not be confounded with the act of sending. The mechanical act can be done by anybody, even by a servant. The sending of a letter is an intelligent act and it has to be done by the proposer and the seconder. An illiterate person may get a letter written for him by another, but he will be the sender, and not the writer, though the letter may be taken to the post-office by a third person and though the address on the envelope be written by a stranger. In the present case it was Mr. Khare who sent the nomination paper in his own name with a covering letter from himself. He was thus the actual sender. The intelligent act of sending which is entirely different from the act of despatching or posting in the post-box could not be delegated by the proposer and the seconder. They had got to do it personally and in our opinion therefore the nomination paper was not in this case properly sent and was therefore invalid.

As arleady stated there were two certificates separately endorsed on Mr. Khare's nomination paper by two different officers. It was urged for the Respondent No. 1 that this was not in conformity with the requirements of Clause (2) of Regulation 2, and that it required one certificate certifying both facts and signed by one officer. We were asked to interpret the second sentence of Clause (2) by putting upon it a strictly grammatical construction and in this connection there was a very interesting argument addressed to us. According to one side, the sentence was complex one, while on the other, it was urged that it was compound. In our opinion it is unnecessary to go into the grammatical construction of the sentence as the meaning is plain enough. All that the rule requires is the certification of certain facts by an officer of a certain status. It is immaterial whether those facts are certified

by means of one certificate from one officer or by two or more certificates given by different officers. It is well-known rule of interpretation that words in the singular include the plural and *vice versa*, unless there is anything repugnant in the subject or context (C. P. General Clauses Act I of 1914, Section 12). By the mere fact that before the word "certificate" the article "a" is put in it does not follow that one certificate was intended and that the plurality thereof meant to be excluded. There is nothing in the regulation indicating the necessity of or importance of only one certificate. Our opinion therefore is that Mr. Khare's nomination paper was not invalid, merely on the ground that there were two certificates endorsed on it instead of one. The requirements of certificates were substantially complied with, except in one particular which shall be presently mentioned.

The rule requires that the certificate is to be appended by the proposer and the seconder. In the present case, the second certificate was obtained by Mr. Khare. It was therefore he, who must be considered to have appended it. The fact that the certificate was endorsed on the back of the nomination paper itself and was not separately attached to it does not make any difference. The regulation required that the certificate was to be appended by the proposer and the seconder and this duty could not be delegated. The candidate could not undertake this duty on their behalf. Neither the proposer nor the seconder was present at the time the second certificate was obtained by Mr. Khare. Our opinion therefore is that the second certificate was obtained or appended as required by the regulations and thus the nomination paper was invalid.

The defects pointed out above were not trivial or insignificant and they did not amount to a mere irregularity. When a certain procedure is laid down, it must be presumed that it was meant to be followed, and that its non-observance would make the proceeding inoperative and invalid. The procedure prescribed in this case was substantially disregarded, making Mr. Khare's nomination invalid.

It was contended that the declaration of the Election Agent made by Mr. Khare required to be on a one-rupee stamp, Article 4, Schedule 1 of the Stamp Act being quoted in support thereof. The article runs as follows:—

"Affidavit—including an affirmation or declaration in the case of persons by law allowed to affirm or declare instead of swearing" —one rupee.

The declaration required by Rule 10(2) of the Berar Electoral Rules cannot be classed as an affidavit. It is not required to be

made before a Magistrate or a Judge or an officer having power to administer an oath or affirmation. The article of the Stamp Act in our opinion presupposes that the affidavit or declaration has to be made before a person having an authority to make a declaration.

The declaration under Rule 10(2) cannot also be considered to be a power-of-attorney. In our opinion therefore the declaration of an election agent made by Mr. Khare did not require a stamp. It was also not bad because it did not specifically mention the constituency. The nomination paper along with which it was sent, would show that it was in respect of his candidature for the West Berar Non-Mohommedan Urban Constituency.

Our conclusions are that the nomination of Respondent No. 2 was not valid, that the nomination and election of Respondent No. 1 was valid, and that the petition is liable to be dismissed. Costs assessed at Rs.250.

RAO BAHADUR W. R. DHOBLE
M. R. PATHAK
H. P. BHARGAVA

UNITED PROVINCES LEGISLATIVE COUNCIL

BULANDSHAHR EAST NON-MOHOMMEDAN RURAL

AMAR SINGH, RAI BAHADUR, O.B.E. (*Petitioner*)

versus

PUNDIT NANAK CHAND (*Respondent*)

It is true that particulars are required only of corrupt practices alleged in the petition. But even in cases of alleged irregularities a concise statement of facts from which the alleged irregularities are to be inferred should be given.

An election will be set aside on account of any non-compliance with the rules when the result of the election was in fact materially affected and not when the result of the election might conceivably have been affected. It must be shown that but for the alleged irregularity or non-compliance with the rules, the respondent would not have secured the majority obtained by him.

A disabling statute must be strictly construed.

Paragraphs 3, 4 and 5 of the petition were struck off for vagueness. The paragraphs ran as follow:—

PARAGRAPH 3

"That at Manikpore and several other polling stations regulations 17(3) and 19 were not complied with and such non-

compliance materially effected the result of the election."

PARAGRAPH 4

"That at Sarai Bhabila recording of votes was stopped for about half an hour in the middle on account of which many voters could not record their votes for want of time."

PARAGRAPH 5

"That at several places persons applied for a voting paper under false personifications and were wrongly identified."

About paragraph 4 the Commissioners said "This paragraph is somewhat vague, but we would have been prepared to enquire into it. It was however withdrawn by the Petitioner's counsel."

Paragraphs 2 and 5 do not contain any statement of material facts, as required by Rule 31.

We are of opinion that it would be dangerous precedent to encourage any laxity with regard to Rule 31. It was said in Worcestor case (1892) quoted in Hammond's Indian Electioneering, page 154, that "to deliver particulars which contain nothing but the name of the candidate and the character of the offence suggested and leave everything else in blank and to attempt under them to fish out some possible materials from which the blank may be filled up is an abuse of procedure." It is true that the word "particulars" is restricted in Rule 31 to corrupt practices, and the facts alleged in Paragraphs 3 and 4 are mere irregularities. But we are not prepared to dispense with the concise statement of material facts required by Rule 31, and we cannot accept Paragraph 3 as containing any statement of facts whatever. Paragraph 5 alleges personation, but it gives no particulars whatever. Paragraphs 3, 4 and 5 are struck out.

We then proceed to enquire into Paragraph 2. Paragraph 2 is "that at Manikpore polling station a quarrel ensued between the presiding officer and some of the voters which prevented the recording of votes from about 2 P.M. and the election had to be stopped altogether at 3-15 P.M. or about it on account of which hundreds of voters had to go away without giving their votes, most of whom would have voted for the petitioner."

We now pass on to facts, and here we have to depend mainly on Mr. Eastwood's report, Ex. 2. Mr. Eastwood was the chief polling officer at Manikpore. He had three colleagues. The four polling officers were provided with four tables, which stood in the Manikpore village school. They were all in the same room. Polling proceeded simultaneously for the United Provinces Legislative Council and for the Indian Legislative Assembly. Each polling officer dealt with both elections. The system was that the elect-

oral roll was divided into four portions according to patwaris' circles. A certain number of these circles was allotted to each polling officer. The voters were admitted at the gate of the school compound, where a police guard was stationed. Four pathways led from the gate to the four polling officers and the voters were admitted in batches of ten for each pathway. They left the compound by another exit. The hours of polling fixed by Government were 8 A.M. to 4 P.M. But no vote, or very few were recorded before 9 A.M., and polling was slack till about 11 A.M. Polling was then brisk and by 12 o'clock the crowd outside the gate was getting uncontrolable. The reason for this was that it was market day at Manikpore and the polling station, rather unfortunately, was situated on the edge of the market, so the crowd outside Manikpore polling station was greater than at other polling stations. Between 12 and 2 Mr. Eastwood had to go in person to the gate of the compound in order to regulate the admission of voters. This, however, caused no interruption in the voting. His three colleagues were sitting at their tables issuing voting papers, and he himself was always able to deal with all the voters who had accumulated in his absence. He says "I was always able to work off the waiting list before going out against, except the last time." "At half past two the crowd got out of hand and burst through the gate of the school compound. Apparently they did not enter the school itself in large numbers for a time, but ultimately they did so, and to quote Mr. Eastwood's report "By 3 o'clock the position became impossible as the crowds of voters simply swamped the room and the presiding officers and clerks could do nothing. Every effort was made to clear the room, but in vain. At 3-15 P.M. I was compelled to stop the election proceedings."

These are the facts. It is quite clear and it is not denied by the Respondent that the regulation prescribing the hours of voting was not complied with. Voting ought to have gone on till 4 o'clock. It was definitely stopped at 3-15 P.M. It is clear that no voting at all took place after 3, and probably very little after half past two. For the purposes of our calculation we have accepted the figure "2.30" as the time when voting ceased to be possible. The figure was accepted by the Petitioner.

It was argued for the Petitioner that he had only to show that it is possible that the result of election might have been affected. We are unable to accept this position. Section 42 directs us to report that the election is void if in our opinion the result of the election was materially affected. It does not say that we are to declare the election void because the result of the election might have been effected. In forming our opinion we have made use

of two methods of calculation. In the first of these we have restricted ourselves to what took place at the Manikpore polling station. The total number of votes is 2,387. The total number of votes recorded is 877. There were thus 1,510 voters who did not vote. But it is quite clear that in no circumstances would the whole of these voters have succeeded in recording their votes. We have it from Eastwood that the voters did not commence to arrive till 9 A.M. and that the voting was not brisk before 11 A.M. We have given full weight to this evidence by reckoning the whole period from 8 A.M. to 11 A.M. as equivalent to only one hour of brisk voting. We have been 3½ hours from 11 A.M. to 2-30 P.M. during which voting went on as fast as the polling officers could deal with it. We reckoned this as 3½ hours of brisk voting. Adding one hour for the period from 8 A.M. to 11 A.M. we obtained 4½ hours of brisk voting. During that time 877 votes were recorded. If the polling station had remained open for another hour and a half, one-third of this number if additional votes would have recorded, that is 292 voters would have been able to record their votes. From this calculation it is clear that, even if the whole 1510 voters had been present the polling officers would have been quite unable to record so many votes. Now Nanak Chand's majority was 243, so if the whole 292 voters had voted for Amar Singh, the result of the election would have been affected. But we are of opinion that it is not possible that he could have succeeded in polling all the remaining votes, and that no other candidate would have polled any. Of the 877 votes actually polled 341 were cast for Amar Singh and 277 for Nanak Chand. There is no evidence to show that this proportion would not have been maintained after 2-30 P.M. If it had been maintained the Petitioner Amar Singh would have obtained 113 votes out of 292. The Respondent Nanak Chand would have obtained 92. The difference between them would only amount to 12 votes, which would not wipe out the majority of 243. Of course these calculations are approximate, but the margin of error is not large.

Our second calculation proceeds on a consideration of the other polling stations. We have taken the total Electoral Roll of the whole constituency, excluding only Manikpore. The result is 20,392. In the same way we have taken the total number who recorded their votes, excluding Manikpore. The result is 9,828. We have reckoned how many persons would have voted at Manikpore if the voting had taken place on the average of the rest of the constituency. The result is 1,144. The number who actually voted it 877. The number who were prevented from recording their votes would be 267. This figure is smaller than the first

figure, which is 292, but the result is practically the same. The majority would have been reduced by about 21 votes.

It is in evidence that a number of identification slips were issued in respect of which no votes were recorded. When the voting was interrupted, there were naturally a number of voters who held in their identification slips. Fifty-nine of these have been produced by Sohan Lal, who was representative at this polling station of the Respondent Nanak Chand. A smaller number were thrown on the table and were sent to the headquarter by the polling officer. This is additional evidence that there were voters who were prevented from voting by the disturbance and the closing of the poll. But this point is not in issue. It is also evident that a large proportion of these voters were Nanak Chand's supporters, for otherwise 59 identification slips would not have found their way to the hands of Nanak Chand's man. We are therefore in a position to say with great confidence that the result of the election was not materially affected by what took place at Manikpore.

We recommend that the Petitioner pay Respondent's costs, which we have fixed at Rs.950.

F. D. SIMPSON
E. R. NEAVE
SAIYID MUHAMMAD SHAFI

INDIAN LEGISLATIVE ASSEMBLY
EAST PUNJAB CASE (MOHOMMEDAN)

K. B. MIR MOHAMMAD KHAN (*Petitioner*)

versus

LIEUTENANT NAWAB MOHAMMAD IBRAHIM ALI KHAN (*Respondent*)

The declaration of the appointment of an election agent is not required to be on a stamped paper. A circular requiring that declaration must be stamped with a fee of Re.1 was therefore held to have no binding force.

Such a declaration cannot be classed as power-of-attorney.

When the declaration of the appointment of Respondent's election agent was deposited with the returning officer as required by election rules, the fact that it was returned to the depositor does not affect the validity of the deposit.

Lithographed post-cards soliciting votes issued to voters should bear on their face the name and address of the printer and publisher thereof.

The non-compliance with this is a corrupt practice within the meaning of Part 2 of Schedule 4 of the Legislative Assembly Election Rules, and would avoid the election if it is proved that it turned the scale in favour of the Respondent.

The Respondent's nomination paper, containing a declaration, dated November 3, 1920, by the Respondent to the effect that he had appointed an election agent, was delivered at the Returning Officer's office on November 5, 1920. It was accompanied by a declaration on plain paper, dated October 12, 1920, by which the Respondent appointed Muhammad Ismail Khan his election agent. This declaration was returned by the Head clerk of the Returning Officer (the Returning Officer, who was the Commissioner of Ambala Division being on tour) to the presenter, who was Muhammad Ismail Khan himself, on the ground that it should be on a stamped paper. The Respondent was away on a visit to Maler Kotla and there was delay in obtaining another declaration from him, but one was eventually made by him, on stamped paper, at about 9 A.M. on November 8, 1920 and sent to Ambala the same day at a time which is stated in the Returning Officer's order to have been 12-40 P.M. The latest time for delivery of nomination papers to the Returning Officer was, in the case of this constituency, noon on November 8, 1920.

The crucial issue is admittedly whether the declaration, dated October 12, 1920, is required to be on a stamped paper or not. If it was not, then the nomination of the Respondent was complete and in order, for we have no hesitation in finding that the provisions of the last sentence of Regulation 2 in Punjab Government Notification No. 9, dated July 31, 1920, directing that the declaration required by Rule 11(2) shall be deposited by the candidate or his agent with the Returning Officer was duly fulfilled. It was delivered to the Returning Officer's office by the candidate's election agent, and the fact that it was thereafter returned to him does not impair the validity of the deposit, as such. Moreover, no date for the deposit of the declaration is fixed by rules or regulations, and, in the absence thereof, we are not prepared to fix any date arbitrarily or to hold that such date has been fixed by implication.

In Paragraph 7 of a circular of instructions issued by the Provisional Reforms Commissioner, under date October 4, 1920, it is said that the declaration must be stamped with a fee of Re.1, but no reason is given for the view that a stamp is required, and we cannot hold that the direction in this circular has any binding force. As it happens, the question has already been the subject of a decision by the Election Commission in the province of Bihar

and Orissa (Shahabad Central case page 75) the Commissioners held that no stamp was required. There, however, it appears to have been argued that the declaration now in question fell under Article 4 of Schedule 1 of Indian Stamp Act (2 of 1899), whereas here the Petitioner's counsel has urged that it is as a power-of-attorney falling under Article 48(*c*) or (*g*) of the schedule that it requires a fee. He admits that the reasoning of the Bihar and Orissa Commissioners is incontrovertible on the application of Article 4. His position amounts to this that the declaration must be a power-of-attorney because it authorises a person to act for another and we understand him to adduce no other argument.

Now we are by no means satisfied that the declaration in question can properly be classed as a power-of-attorney. It is true that the definition of the term in Section 2(21) of the Stamp Act merely says that power-of-attorney includes any instrument empowering a specified person to act for and in the name of the person executing it, and is therefore not exhaustive, but, as it is sought to impose a disability on the Respondent by invoking the provisions of the Stamp Act we should, on the ordinary rule for the construction of statutes require the Petitioner strictly to show without the possibility of doubt, that the Respondent is so disqualified.

The applicability of a power-of-attorney (as it is to be understood from Section 2(21) of Article 48 of the Stamp Act) to the relation of a candidate and his election agent is at least open to doubt. The rules allow a candidate to act as his own election agent and should he chose to act, the execution of a power-of-attorney would be clearly inappropriate. We are not impressed with the argument that in such cases no stamp would be required, whereas, if the candidate appointed another person as his election agent, it would be required. Again, there are duties imposed on an election agent which he performs in *propria persona*: thus under Rule 19 of the Electoral Rules, every election agent has to keep regular books of account and this duty is not one which the candidate authorises him to perform. Further, the rules do not specifically lay down that a power-of-attorney is to be executed, as we should have expected to find and, on the principle already alluded to, we should be reluctant to import into them any liability not specified in them and tending to disable a candidate. The word "declaration", as used in the rules, is itself also a legal term: it appears in Article 4 of Schedule 1 of Stamp Act and we incline to the view that, if it is sought to impose a fee upon a document which is called by the legislature a declaration, it should be imposed under an article in which that word is used. On a reasonable

construction it would appear to us that the declaration in question is intended to be an intimation to the authorities on the part of the candidate that a certain person will be responsible for carrying out the duties of an election agent, although the framers of the rules have chosen to combine the declaration with the actual appointment as the wording of Rule 11(2) shows: appointment is also a legal term—it appears, for instance, in Article 7 of Schedule 1 of the Stamp Act, but it is not argued that an appointment, as such, is liable to a fee.

Lastly, Petitioner's counsel has been unable to satisfy us that, even if the declaration should have been on a stamped paper, it could not be validated for the purpose of the Stamp Act by subsequent affixing of a stamp, with or without a penalty.

As we have decided in favour of the declaration of October 12, 1920, any discussion of the declaration of November 8 would be superfluous.

It is admitted by the Respondent that lithographed post-cards to electors soliciting votes, such post-cards not bearing on their face the name and address of the printer and publisher were issued at his direction. This is a corrupt practice under Rule 8, Part 2 of Schedule 4 of the rules, but can we have the effect of avoiding the election only if it be proved that the election of the returned candidate has been procured or induced, or the result of the election has been materially affected thereby (Rule 42(1) (*a*)): no such proof is forthcoming and we hold that the election cannot be avoided on this ground. The petition failed for the above reasons. There was recriminatory petition which failed on facts.

As regards costs, we direct that the Petitioner do bear all the costs of these proceedings with the exception of those assignable to the recriminatory case, the whole of which will be borne by the Respondent. We make no order as to the costs of the Government Advocate.

S. A. RAOOF
F. W. KENNAWAY } *Commissioners*
DALIP SINGH

PUNJAB LEGISLATIVE COUNCIL
HISSAR DISTRICT (NON-MOHOMMEDAN RURAL)

RAJMAL (*Petitioner*)

versus

RAI SAHEB CHOUDHRI LAJPAT RAI
DR. RAMJI LAL } (*Respondents*)

The relationship of candidate and agent in election law is much wider than that of principle and agent under the ordinary law, and such relationship is to be inferred from facts.

Where two men intimately connected with the Respondent, one being his brother and the other a relation and one of his polling agents and a person for whom he had appeared as a pleader in a number of cases were found to have acted at the election for him, they were held to be the agents of the Respondent within the meaning of the term as understood in election law.

When nearly 100 voters from one village were proved to have been fed by men intimately connected with the Respondent, they were held to have been fed in order to induce them to vote for the Respondent, and a corrupt motive was inferred.

The Respondent was called upon to produce evidence to rebut the charge of treating at Hansi only, in regard to which we considered that the Petitioner had made out a prima facie case. There is something more tangible than mere oral evidence to go upon in this case. There is documentary evidence, the credit of which has not been impeached in any way, in the bahi of Kesari (P. W. 21) showing that on December 2, 1920, which was the polling day at Hansi, a debt of Rs.114-6-0 was jointly incurred by Ude Singh Jat, son of Ganga Ramnand, Sissu Jat, son of Jwala, of village Sirsai, for sweetmeats. Kesari states that Sissu and Ude Singh bought from him on December 2 sweets worth Rs.114-6-0 which were given to zamindars coming from the district outside the town, a seer to each. We find that both these men are intimately connected with the Respondent and must be presumed to have been acting on his behalf, even if it may not be safe to presume that they were doing so with his knowledge and consent. Sissu or Sis Ram was the Respondent's own younger brother and, though not appointed election agent, is to be regarded, as one who was acting as one of the Respondent's agents during the election, specially in view of the Respondent's admitted personal connection (as will appear below) with, at any rate, a portion of this item of Rs.114-6-0. Unfortunately, Sissu died during the pendency of this case, but the commission has no reason to suppose

that his explanation would have been any different to that offered by the Respondent himself. Ude Singh is a caste fellow of the Respondent and belongs to his village. He owns lands jointly with, and is a friend of Amin Lal, who was admittedly, a polling agent of the Respondent. The Respondent has been appearing as a pleader in a number of cases, for parties, among whom the name of Ude Singh is included, though the respondent professes himself unable to say for certain whether he was ever engaged by Ude Singh personally or not. On the polling day Ude Singh was acting in unison with Sissu, both incurring a joint responsibility for the item of Rs.114-6. This is a combination of circumstances from which the conclusion that Ude Singh was acting as an agent of the Respondent seems to be irresistible. It is to be remembered that, in English Law, which, in this respect, may well be referred to, the relation of candidate and agent is much wider than that of principle and agent under the ordinary law, and such relationship is to be inferred from facts.

We need not elaborate any further the reasons which have convinced us that the story of the Respondent in explanation of the item of Rs.114-6 is untrue, and that the expense was incurred jointly by the Respondent's brother and by Ude Singh, who were, on the polling day, acting in the interests of the Respondent, and were, for the purposes of the election, his agents. It remains to be seen, whether these sweets were distributed to voters in order to induce them to vote for the Respondent. Ude Singh admits that the men whom he fed on the polling day included voters and he would have us believe that there were many non-voters among them. But that the men fed at Kesari's were voters is apparent from the entry which Ude Singh himself secured in the bahi of Baijnath. This runs thus "Rs.50, advanced to Ude Singh, son of Ganga Ram, to be paid to Kesari Halwai of Hansi, for the food of the 'parchawalas' (voters) of Thulla Indwan." This was the position on December 29, 1920. It is clearly an after thought now to introduce non-voters among the persons fed. We take it, therefore, that the persons fed were voters. When nearly one hundred voters from one village were fed on the polling day at Hansi by two men intimately connected with the Respondent, and acting on his behalf, as we have found above, the inference is clear that they were fed in order to induce them to vote for the Respondent. The effort to win their votes may have succeeded in some cases and failed in others, but that would be immaterial. The corrupt motive is shown by the circumstances proved and makes the action of the two agents a corrupt practice which would, as indicated above, avoid the election of the returned candidate.

We do not see any sufficient reason, on the record before us to come to the conclusion that he (Respondent) was personally concerned in the doings of his agents or was conniving at them.

The two agents, we think, have clearly been guilty of the corrupt practice alleged against them, but one of them, Sissu is dead leaving Ude Singh, who is equally to blame, to take the consequences of his conduct under the Electoral Rules.

We report that the Respondent has not been duly elected, that no corrupt practice is proved to have been committed by him, but that the corrupt practice of bribery, by treating, as defined in Rule 1, Part 1 of Schedule 4 of the Punjab Electoral Rules, has been proved against Ude Singh, son of Ganga Ram, Jat, of Sirsai, in the Hissar district.

As regards costs, we consider that the Respondent, although he loses the seat, should not, in view of the failure of the Petitioner to make good his allegations, be called upon to pay all the costs of the Petitioner. We direct the Respondent to pay the Petitioner Rs.700 costs in all.

F. W. KENNAWAY, *I.C.S.*
K. B. SHEIKH ABDUL QUADIR, *Bar-at-Law*
KUNWAR DALIP SINGH, *Bar-at-Law*

UNITED PROVINCES LEGISLATIVE COUNCIL
JAUNPORE (NON-MOHOMMEDAN URBAN)

RAJA HARPAL SINGH (*Petitioner*)

versus

PANDIT KRISHNA KANT MALAVIYA (*Respondent*)

It is the duty of the polling agents to identify voters only in cases where they have personal knowledge. The fact that the agent believed in good faith a person to be a voter while he was not such voter, or that there was a genuine mistake on part of the polling agent will not be good defence to a charge of personation in an election petition.

Discussion of what amounts to a false statement against the personal conduct and character of a candidate.

As regards issue No. 1, it is admitted on behalf of the Respondent that Munshi Partab Narain was the Respondent's agent and identified Thakur Ram Sunder, although he did not know him personally. He did so only because of the statement made by Thakur Ram Sunder.

The Petitioner has called the Superintendent of Police, Jagannath Prasad Mehta, who was the Presiding Officer at the polling

station at Bakhsha. This gentleman states that he gave distinct instructions to the agents of the candidates to identify only such persons as they knew personally. Jamadar Singh the Petitioner's agent, at the same polling station corroborates this evidence. Both these witnesses make it clear that Munshi Partab Narain received distinct instructions before the polling began that any identification of voters made by him were to be made only from personal knowledge.

In the written statement of the Respondent it is suggested that M. Partab Narain acted in good faith and it was a genuine mistake on his part. We are unable to accept any such explanation. The duties of M. Partab Narain at the polling station are defined by the Regulation 17, Clause 3, of the regulation published by the local government on July 29, 1920. The Regulation quoted lays down: "Every signature or thumb-impression so made shall be attested by any candidate or his representative as aforesaid who may be able to recognise the voter." M. Partab Narain was the Respondent's representative at the polling station and it was his duty to acquaint himself with the rules and with his duties. In the present case it is on record that the presiding officer himself gave him clear instructions. There can be no possible doubt that it was the duty of M. Partab Narain only to make identification in cases where he had personal knowledge. He admittedly had no personal knowledge in case of Thakur Ram Sunder Singh and there was no justification, therefore, for his identifying him.

For the above reasons, we decide issue No. 1 against the Respondent.

The fourth issue is: "Did Shiam Behari Misra, agent of the Respondent, procure or abet the procuring of the application for a voting paper by Ajudhia, son of Kanhai in the name of Ajudhia, son of Bodhi?

On behalf of the Respondent in this case it is admitted that Shiam Behari Misra was the agent of the Respondent and identified Ajudhia, son of Kanhai, although he did not know him personally. He did so because of the statement made by the said Ajudhia, son of Kanhai.

In this case the Presiding Officer at the polling station of Shujanpore was called by the Petitioner. He stated that before the polling began he gave instructions to the agents of the candidates that they were to identify only such voters as they knew personally. It appears, however, that Shiam Behari Misra arrived after the polling began, and the Presiding Officer cannot be sure whether he gave these instructions to Shiam Behari Misra. It is

possible, therefore, that Shiam Behari did not receive any express instructions from the Presiding Officer. It is admitted, however, that he was the representative of the Respondent at the polling station and therefore his duties as to identification are those defined under Regulation 17, Clause 3, of the Regulations published by the Local Government on July 29, 1920. The Regulations in question has already been quoted. It was the duty of Shiam Behari Misra to acquaint himself with the duties which he had to perform and he was undoubtedly responsible for knowing the rules governing those duties. Jagannath Prasad was the signature slip clerk at the Shujanpore polling station. He is a witness called by the Respondent. He has stated: "I read out to Ajudhia what was written in Electoral Roll. Sham Behari was present. I cannot say who identified Ajudhia, but all identifications were made in my presence. I asked each man who identified whether he recognised the man he identified." The evidence of this witness shows that identifications were to be made from personal knowledge and the witness says that he satisfied himself that this was understood in each case of identification. It is admitted that Shiam Behari Misra made the identification in the present case. It follows, therefore, that he told the signature slip clerk that he actually recognised Ajudhia, son of Kanhai, although as a matter of fact he did not know the man at all.

We find in this case also that Shiam Behari Misra, the agent of the Respondent, had no justification for making a false identification. Issue 4 is decided against the Respondent.

Issue 10 is as follows:—

"Did the Petitioner or his agent or any other person with the connivance of the Petitioner or his agents publish in Exs. A-1, A-2, or A-3 any statement of a fact which was false and which the Petitioner or his agent believed to be false or did not believe to be true in relation to the personal character or conduct of the Respondent and was any such statement reasonably calculated to prejudice the Respondent's election? As to Ex. A-1, it is admitted on behalf of the Petitioner that it was issued by the Petitioner."

Two passages in Ex. A-1 are relied on by the Respondent. The first is as follows as translated:—"Your sacrifice and unselfishness were tested on that very date when the Congress resolved upon non-co-operation and the unselfish congressmen like Pandit Moti Lal Nehru, Babu Purshotam Das Tandon, Babu Sri Prakash and the revered Pandit Madan Mohan Malaviya withdrew."

In our opinion the sentences quoted refer to the policy of non-co-operation and have nothing to do with the personal character of the Respondent. The statement, therefore, is not covered

by the fourth rule of Schedule 4, Part 1.

The second portion of Ex. A-1 relied upon is as follows:—

"My desire was that you should have continued to stand till November 30, but your challenge is like the vanishing flicker of a lamp and indicates your sudden disappearance from the contest." It is urged on behalf of the Respondent that this sentence suggests that the Respondent had withdrawn from the contest, and therefore it was a statement which would fall within the definition given in Rule 4 of Schedule 4, Part 1.

We do not agree with this interpretation of the Respondent. The very next sentence in Ex. A-1 is as follows:—"I therefore accept your challenge or your last cry if you appoint an umpire as is the custom in all discussions". It appears that Ex. A-1 is a reply to a challenge made by the Respondent to the Petitioner that they should both meet before a common assembly and ask each other questions and the assembly would be in a position to hear their replies and in this way settle which candidate the assembly preferred. The sentence in Ex. A-1 just quoted shows that the Petitioner was prepared to accept this challenge, thereby showing unmistakably that he did not consider that the Respondent had withdrawn, from the election and anyone reading Ex. A-1 would also realise that the Respondent was still one of the candidates for the constituency.

We find that there is nothing in Ex. A-1 which can be brought under Rule 4 of Schedule 4, Part 1.

As to Ex. A-2, it appears to be an open letter signed by one Chhotu Lal. In this connection for the Petitioner it is stated that Chhotu Lal was not a worker for the Petitioner and the Petitioner knows nothing about him or Ex. A-2.

The first passage in Ex. A-2 relied upon by the Respondent is translated as follows:—

"Do you not remember that when there was a quarrel between Hindus and Mussalmans at Chorari, Pandit Madan Mohan Malaviya did not help you at all and gave you a blank reply?" Pandit Madan Mohan Malaviya is the uncle of the Respondent. The sentence quoted above refers to Pandit Madan Mohan Malaviya and we are unable to see how a statement regarding the Respondent's uncle can be treated as a statement regarding the personal character or conduct of the Respondent himself.

The next portion of the paper Ex. A-2, relied upon is as follows in the translation:—

"Poor Hindu, brethren who had received shots came away disappointed. In the Council of the Lat Saheb (Provincial Council) Syed Ali Riza Saheb was interpellating on behalf of the Mussalmans

and was prepared to fight for the Mussalmans, but not a word came out from the mouth of Pandit Madan Mohan Malaviya on behalf of the Hindus. The Jadu newspaper of Jaunpore wrote many complaints against Babu Mani Bhushan Chakravarti, Deputy Collector, and on the strength of the writings of that paper, Syed Ali Riza Saheb complained against the said Deputy Collector, in the 'Lat Saheb Council'. But the Abhyudaya newspaper, whose editor Pandit Madan Mohan Malaviya possesses to be, did not speak for or against the questions of the Syed Saheb at that time. Is it then on the strength of this love of country that Malaviya has come to Jaunpore to take votes? Was Malaviya a vakil? Could he not come to Jaunpore and look after the cases of the Hindus in the Chorari case? Was Malaviya a member of the Council? Could he not give replies to the questions of the Mussalmans? Could Abhyudaya not help the Hindus? Then what is the reason that Malaviya was silent at that time and today he is asking for votes from the Hindus of Jaunpore?"

In this portion also of Ex. A-2 reflections are made against the Respondent's uncle and also against the Abhyudaya newspaper which is practically owned by the uncle. The Respondent is at present the editor of the Abhyudaya newspaper. He was not the editor at the time of Chorari riots. Statements regarding the Abhyudaya newspaper more specially at the time when the Respondent was not the editor and statements regarding the Respondent's uncle in our opinion cannot be regarded as statements in relation to the personal character and conduct of the Respondent.

The next portion of Ex. A-2 relied upon by the Respondent is as follows:—

"If you consider Malaviya to be a very big leader, then it is your mistake. Only he who has zamindari and who is managing a raj can know about politics, and one who does not own a single 'dhur' of land, what knowledge can he have about the management of an estate? The Respondent owns a zamindari which pays Rs.13 or 20 annual revenue and manages it through his servant. It is perhaps an exaggeration to say that he does not own a 'dhur' of land. It is quite true, however, that he is not a practical zamindar and the criticism made in regard to him therefore has justification. We do not find that there is any reflection upon the personal character or conduct of the Respondent in the sentences quoted above.

The last portion of Ex. A-2 relied upon by the Respondent is translated as follows:—

"The present day modern leaders cannot do anything except spreading sedition (disloyalty). If you want to obtain Swarajya,

then elect and send members like Thakur Harpal Singh to the Council. There is loss in disloyalty and benefit in loyalty. Those things which you can obtain by pleasing the king cannot be obtained by non-co-operation. Vicious horses are whipped, their rations are stopped and they are shot. The owner keeps good horses with love and gives them every sort of comfort. Kashi Naresh (Maharaja Benares) obtained Swarajya by pleasing the Government. Therefore while electing your representative to the Council you should also bear in mind whether your representative had the signs and virtue of loyalty. Thakur Harpal Singh Saheb has both the qualities of loyalty and love of country and therefore you should elect Thakur Saheb. You should remove this idea from your mind that Malaviya will win Swarajya for you by arguing. Swarajya will be obtained by humility and loyalty. Krishnaji Maharaja bestowed all the gifts on Sudama Brahmana by his prayers but Kans was killed on account of his pride. Swarajya was obtained by Bhibhishan. Rawan, though a leader like Malaviya met with destruction."

In our opinion the real meaning of the paragraph is that in the opinion of the writer Swarajya can be obtained by loyalty and not by disloyalty to the king. Kans was the opponent of Krishna. Sudama was the helper of Krishna. Bhibhishan was the helper of Rama while Rawan was the opponent. In both cases Kans and Rawan were killed while Sudama and Bhibhishan were rewarded. The whole reference is to the policy of non-co-operation which is described as disloyal and therefore unlikely to result in any benefit to the nation. There is nothing in the paragraph which can refer to the Respondent except the words "Rawan though a leader like Malaviya, met with destruction." The words, however, do not say more than that Malaviya is a leader. They do not say that he is like Rawan in any other respect.

We have decided issues 1 and 4 against the Respondent. He is, therefore, found responsible for the commission of two corrupt practices as defined by Rule 3 of Schedule 4, Part 1, and we report that under Rule 42 the election of the Respondent is void. The Petitioner is entitled to be declared duly elected. The Petitioner should receive his costs from the Respondent and we fix the amount of such costs at Rs.300.

Under Rule 45 we find that M. Partab Narain and Shiam Behari Misra, both agents of the Respondent, have been proved guilty of corrupt practices as defined by Rule 3 of Schedule 4, Part 1. We do not recommend that either M. Partab Narain or Shiam Behari Misra should be exempted from any disqualifications they may have incurred in regard to the fact that those corrupt practices have

been proved against them.

F. B. SHERRING, *I.C.S.*
SEETLA PRASAD BAJPAI
KRISHNA KUMAR

THE PUNJAB LEGISLATIVE COUNCIL
THE LAHORE CASE (MOHOMMEDAN URBAN)

MALIK BARKAT ALI (*Petitioner*)

versus

MAULVI MUHARRAM ALI CHISHTI (*Respondent*)

A corrupt motive is essential to constitute a corrupt practice. When certain Pirs only expressed a wish that their followers might support the Respondent without any threat or inducement, this was held not to amount to undue influence.

Indian Election Law is based on English Election Statutes, but it differs from English Law widely in numerous particulars and should be regarded as a separate corpus, the Indian Legislators having adopted some and discarded others of the English Election provisions. The Indian Legislature intended to make their statutory provisions complete in themselves, and there is nothing whatever to indicate, that there was any intention that the Indian courts should administer English Common Law provisions.

But in default of any provision in the Statute Law, the Indian Courts may fall back on the principles of English Common Law, because they are considered to represent the principles of justice, equity, and good conscience, upon which the law, as a whole is to be administered.

But these principles can be utilised only when no statutory provision exists in Indian Law.

There is no rule of English Statute Law corresponding to Rule 1 of Part 2 of Schedule 4 of the Punjab Electoral Rules, which makes it possible to avoid an election on the ground of the action of persons unconnected with the candidates or their agents, provided always that the result of the election has been materially affected thereby.

The burden of proving that the result of the election was materially affected lies on the Petitioner. Indian Law differs from English Law inasmuch as the latter only requires the creation of a presumption that the result of the election may have been effected, while the former requires that the result of the election was in fact affected.

The word "particulars" is nowhere defined, and a wide discretion is left to the Commissioners to decide what are sufficient particulars with

reference to each particular case. Where particulars are given, which in the opinion of the court are enough to save the petition from being rejected for want of particulars the court has power to allow amendment in the sense of amplification of particulars. The object of particulars is to prevent the opposite party from being taken by surprise, and if the particulars are not sufficiently specific, the remedy of the other side is to call for further and better particulars.

Where no particulars are given, the petition would be rejected.

Amendment is a wider term than mere amplification, and amendment would ordinarily be allowed provided that no new substantive charge is added thereby.

A preliminary objection was disposed off by an intermediate order which is an annexure to the report.

The position taken up by the Petitioner is that, even though no actual threat was held out to anyone by the two Pirs (Pir Jamaat Ali Shah and Pir Mirza of Qadian, through whom spiritual undue influence was alleged to have been exercised by the Respondent), yet the effect of the instructions, which they gave to their followers, would be such as to produce on the minds of their followers the fear that they would be committing a sin if they did vote for the Respondent, drawing a further inference therefrom that the incurring of divine displeasure would result from the commission of this sin. In our view this position is quite untenable, if only because, when it is sought to bring home a corrupt practice to any one, it is the action of that person which must be primarily looked to; corrupt intention is the essential element and no such corrupt intention has been shown as regards the Pirs. The question of what persons addressed thought, is a secondary one and does not arise, if no corrupt intention on the part of the Pirs is shown. But, even apart from this, we are not satisfied that the persons addressed would all, or even in the majority of cases, consider that it would be a sin not to vote in accordance with the recommendation of a Pir. There is some evidence to show that ignorant and over credulous persons might so consider it, but even if that there is not sufficient to convince us that is really the case. At the same time, we think that candidates should exercise great caution in invoking the aid of spiritual leaders to assist their candidature, and that spiritual leaders themselves before addressing their followers, should weigh very carefully the effect which their words would have upon each and every section of such followers.

After discussing the evidence the Commissioners came to the conclusion that there was general intimidation of voters but it was directed against both parties equally, and that it was im-

possible to determine whether the Petitioner had suffered more than the Respondent. Again it was found that the small percentage of votes cast was due mainly to the non-co-operation movement, which had affected other polling stations than those against which complaint of general intimidation was made by the Petitioner.

The learned Commissioners then went on as follows.

Assuming it to be a fact, however, that there was general intimidation of voters, the Petitioner's position may be thus stated:—

He points out in the first place, that in England such general intimidation is not provided for by the Statute Law but is dealt with under the Common Law, under which it is by itself a specific ground for declaring an election void, if it be shown that the result of the election may have been affected: and, secondly, that in England Statute Law only fills up the gaps in Common Law, which can be applied independently of Statute. From these two propositions he argues that, since Election Law in this country is imported from England and based on the English Law of elections, we should take it that the Indian Statute Law thus imported brings with it the provisions of the English Common Law, which should, in matters dealt with by the English Courts under Common Law, be applied in India also.

In the alternative he argues, though without much conviction, that if Indian Statute Law be held applicable and it consequently becomes necessary to find not only that there was undue influence as defined in Rule 2 of Part 1 of Schedule 4 of the Punjab Electoral Rules, but also, since the case falls under Rule 1, Part 2 of the same schedule, that the result of the election has been materially affected, he has established the fact of general intimidation of voters, and that the burden of proving that the result of the election was materially affected should no longer lie on him, but that, following the principle laid down by us in the Rohtak case we should require the other side to prove that the result of the election was not materially affected.

The Petitioner is able to advance no authority or precedent for the somewhat remarkable conclusions which he wishes us to draw from the two propositions which we have stated. It is at least arguable in the first place, whether we should allow that English Common Law which is essentially personal in its application of its provisions, should be applied to persons who are of a different nationality and who have a definite personal law of their own.

It may be true that Indian Election Law is based on English

Statutes, but it differs from English Law widely in numerous particulars and should be regarded as a separate corpus, the Indian Legislators having adopted some and discarded others of the English Election provisions. It seems to us that the Indian Legislature intended to make their statutory provisions complete in themselves, and there is nothing whatever to indicate that there was any intention that the Indian courts should administer English Common Law provisions.

This is quite a different thing to saying—and this is certainly a proposition for which there is authority—that, in default of any provisions in the Statute Law, the Indian courts may fall back on the principles of English Law. Principles are entirely different in essence to specific provisions and the English Common Law provisions are only adopted as we understand the law, in this country, because they are considered to represent the principles of justice, equity, and good conscience, upon which the law, as a whole is to be administered. But these principles even can only be utilised where no statutory provision exists, and in the present case, we have no doubt that such provision does exist. English Statute Law only contemplates the avoidance of an election by reason of the acts of a candidate or his agents, and there is no rule of English Statute Law corresponding to that contained in Rule 1 of Part 2 of Schedule 4 of the Punjab Electoral Rules, which makes it possible to avoid an election on the ground of the action of persons unconnected with the candidates or their agents, provided always that the result of the election has been materially affected thereby (Punjab Electoral Rule 42(1) (*a*)).

It seems to us that there exists a clear provision in the Indian Law enabling us to deal with the facts of this case that the question of the application of English Common Law need not be further considered, but we may add one further observation. Even if English Common Law were to be applied it is only established by it that, on the one hand, if general intimidation has been of such a general character that it may have affected the result of election, then the election is void (North Durham Case 2 O'M. and H. 156), that, on the other hand, even where there was an organised system of intimidation, if it was proved that it was practised not by persons acting in the interest of the Respondent but against him and in the interest of the other candidate, the election would not be avoided (A ligo Case 1 O'M. and H. 300).

There is no precedent for dealing with a case of the kind before us, where, even if it be assumed that the result of the election may have been affected, neither of the parties can be shown to have suffered more than the other.

Nor can we accept the Petitioner's contention that we should shift on to the Respondent the burden of proving that the result of the election has not been materially affected—in order to do this, we should have to find that a presumption had been created by the Petitioner's evidence that the result has been materially affected by intimidation. This we were able to do in the Rohtak case, but here, although we might, on the Petitioner's evidence, if unrebutted, have been justified in presuming that the result may have been affected, we certainly could not, owing to the existence of uncertain factors already stated, presume that it has been affected. Herein lies the difference between the English Common Law, if it could be applied—as we have shown it cannot—and the Indian Statute Law which we must apply: the former only requires the creation of a presumption that the result may have been affected: the latter requires the creation of presumption that it has been affected.

The petition thus fails on both contentions.

In awarding costs, we take into account facts, among others, that the Petitioner had reasonable grounds for seeking a decision of the question of general intimidation, and that the Respondent incurred no expenses for witnesses, while he was, except on the preliminary point, his own counsel in the counsel in the conduct of the case. We award the Respondent a lump sum of Rs.300.

The Annexure to the Report.

It is urged by the learned counsel for the Respondent that the procedure prescribed in the Punjab Electoral Rules and in the rules in force in other provinces in India, differs materially from that prevailing in England, as to contents of an election petition. While in England particulars of any corrupt practices alleged in the petition are not given in the petition and may be supplied within a specified time after filing the petition, in India the rules require them to be embodied in the petition. It is contended that the rule on this point is an improvement on the practice obtaining in England and is the result of experience gained thereof the difficulties arising out of the said practice. It is further argued that compliance with this part of the rule is so essential to the validity of a petition, that any petition which alleges corrupt practices, but fails to give particulars, should be regarded as incomplete and should be rejected without there being any enquiry into it. It is also argued that since it is necessary under the rules to publish the petition in the Government Gazette as a notice to other possible respondents and the rest of the world, the particulars must be published with it, as any subsequent furnishing of particulars

would require the publication of such particulars in the Gazette and would mean endless delay. It is contended by the Petitioner, on the other hand that, that the petition is not defective, but that if it is considered lacking in any particulars he may be permitted to supply the said particulars. The Petitioner further lays stress on the fact that inasmuch as one of the corrupt practices alleged by him is general intimidation he cannot be expected to give the names of those responsible for it, but that he has specified what the corrupt practice was, on what date it occurred, and what form it took viz., "violence and threats of injury and hooliganism". With regard to the second corrupt practice alleged by him, viz., the use of undue influence by certain "Pirs" (spiritual leaders of Muhammadans) he says that he did not mention their names as he considered it would mean mentioning what his evidence would be, but that he is ready to specify the names of the said Pirs if so desired before the trial actually commences so as to give sufficient notice to the Respondent. There is no doubt, considerable force in the argument that it was intended by legislature in India that particulars of any corrupt practice alleged must be given in the election petition and that the English Law in this respect has not been followed. In England we find that the procedure is briefly as follows:—

A petition may be presented within 14 days after the day on which the Returning Officer receives the return and declaration respecting election expenses by the member to whose election the petition relates and his election agent, but a period of 28 days is allowed, if an illegal practice is specifically alleged (Section 40 corrupt and Illegal Practices Prevention Act, 46 and 47 Vic. at page 773 of Rogers on Elections, 1918 Edition volume 2). The return and declaration respecting election expenses must be made within 35 days after the day (Section 33 of 46 and 47 Vic at page 761 of Rogers). Thus a Petitioner in England may have so long a period as 49 days within which to present his petition, or longer if he alleges an illegal practice. But even further time may be allowed for particulars to be stated, for under Rule 6 of Parliamentary Election Petition Rules (page 906 of Rogers) the court or a judge may order such particulars as may be necessary to prevent surprise and unnecessary expense and to ensure a fair and effectual trial.

As against this wide latitude in England, Mr. Mahtab Singh propounds the view that the law in India is that both the petitions must be put in and the particulars furnished therein within 14 days from the date on which the result of the election has been published in the Gazette (Rules 30 and 21 of the Punjab Electoral

Rules), and that no particulars whatever may be furnished after that period has expired. We should be reluctant to think that any such wide divergence from the English Law and practice was contemplated by the Indian Legislature.

But even though it may be granted that there has been a deliberate departure from the English Law in this respect it does not necessarily follow that a petition is to be rejected in *limine* on the ground that it fails to give particulars. It is to be borne in mind that the Punjab Electoral Rules do not provide any penalty for failure to comply with Rule 31. In the rules it is only at one place that summary dismissal of the petition is enjoined, and that is Rule 34(1) for non-compliance with Rule 33 (failure to deposit security). It cannot be assumed, therefore, and it does not stand to reason, that the framers of the Electoral Rules meant that any incomplete compliance with provisions of Rule 31 should be so severely penalised. They would presumably have said so if any such penalty had been intended to be imposed we have been referred to a recent compilation on "Indian Electioneering" by Mr. Hammond, I.C.S., which gives at page 149 (First Edition) schedule illustrating the form in which particulars might be stated by the Petitioner, and it is said that something on those lines should have been attempted by the Petitioner in this case. It is stated in Mr. Hammond's book that particulars are usually furnished in England in the form a schedule and the form is certainly convenient as showing at a glance what the broad features of the alleged corrupt practices are. There is a form of the petition given by Mr. Hammond at page 147, which is the same or very nearly the same as that given by in Halsbury's Laws of England, volume 12 at page 415. The rules or regulations made in India have not laid down any form in which the petition is to be drafted or of the particulars to be added in cases where particulars are necessary. Those Petitioners, therefore would be presumably within their rights, who, under present conditions draft their petitions according to the requirements of the Civil Procedure Code; the present enquiry must, as nearly as may be, in accordance with the procedure applicable under that code (Punjab Electoral Rule 35) and its requirements will be discussed below.

As regards the argument from publication in the Gazette, it is clear to us from a perusal of Rule 34(2) (*b*) that the main, if not the only object of such publication is to notify candidates other than the Petitioner or Petitioners and Respondent or Respondents that a petition has been presented. For certain purposes, no doubt, publication in the Gazette is intended to be a notice to the world, in order that ignorance of the matter published may

not be pleaded later on by any parties affected, but we have no reason to suppose that publication of any election petition is intended to impose any obligation upon any person except "candidates other than the Petitioner or Petitioners, or Respondent or Respondents." In England, we observe that the rule is to publish the petition only, and that too in the limited area of the country or borough (Halsbury's Laws of England, volume 12 page 412).

After carefully considering therefore the arguments addressed to us we are not prepared to say that the petition does not sufficiently comply with the requirements of Rule 31 (Punjab Electoral Rules). We are at any rate, strongly of opinion that the petition is not so defective, in respect of particulars that we should report to His Excellency the Governor that it should be rejected without being heard. As already said, no penalty is prescribed in Rule 31, and particulars not being defined, a wide discretion would appear to be left as to the interpretation of what "particulars" mean.

We wish it to be distinctly understood that we are laying down no general rule as to what particulars are necessary under Rule 31, but are confining our decision to the particular circumstances of the present case.

The second main question raised in the preliminary objection is whether, if the particulars given are considered sufficient for the purposes of the petition, but that further particulars are nevertheless desirable, the court has power to allow amendment in the sense of amplification of the particulars. Rule 35 of the Punjab Electoral Rules, makes the Civil Procedure Code applicable, as nearly as may be, to the present enquiry. Mr. Mahtab Singh argues that, where a specific rule has been laid down in the Electoral Rules, the procedure applicable under the Civil Procedure Code is not to be applied; and since there is a specific rule namely, Rule 31, which requires particulars to be given in the petition, the procedure applicable under the Civil Procedure Code is, therefore, not to be applied. But we have already held that sufficient particulars have been given to satisfy Rule 31 and there is no specific rule taking away the power to order further and better particulars, his argument as to the inapplicability of the Civil Procedure Code consequently falls to the ground. The only point, therefore, remaining for decision upon the second question raised in the preliminary objection is what is the procedure under the Civil Procedure Code.

Now, in Order 6, Rule 2 of the Civil Procedure Code, the words used with reference to the pleadings correspond with reference to the material facts to be alleged in the petition or

pleading with the exception that the petition is not limited, as is pleading to such facts, and if we turn to Order 6, Rule 4, we find that particulars shall be stated in certain specified cases, e.g., misrepresentation, fraud, and undue influence, and, in all cases in which particulars are necessary, they shall be stated in the pleadings. So far, then as words go, the directions in the Civil Procedure Code are as mandatory as those contained in Rule 31. Then in the commentary in Mulla's Civil Procedure Code on Order 6, Rule 4, it is said that particulars will be ordered of such material facts on which the party pleading relies for his claim or defence, but not of the evidence (cf. Eng., Petition Rule 6, Rogers page of the particulars is to prevent surprise, and to ensure a fair trial 906) by which those facts are to be proved, and that the object by giving notice to the other side of the claim they have to meet and thereby to prepare their case properly. It follows from the above, that the particulars which should, or would have to be stated very naturally with the facts of each particular case. If particulars are not sufficiently specific, the remedy of the other side is to apply for further and better particulars under Order 6, Rule 5. The matter is otherwise, where there are no particulars at all but merely general allegations however strongly worded, which would not amount even to an averment of fraud, 5 A. C. 685 at pages 697, 701 and 709. In such a case the plaint would be rejected under Order 7, Rule 11, as not disclosing a ground of action at all. This would seem to be the case specially as regards allegations of fraud and *mutatis mutandis*, would, we take it, apply generally to other cases where particulars are necessary.

Under Order 6, Rule 17, which was not referred to by either side, the Court is given power to allow alteration or amendment of pleadings at any stage of the proceedings upon such terms as it thinks just and all amendments necessary to determine the real questions in controversy shall be made. According to the judgments of Bramwell, L. J., and Bowen, L. J., cited in Mulla's commentary "there is no kind of error or mistake which if not fraudulent or intended to over-reach, the Court ought not to correct, if it can be done without injustice to the other party". (1882) 32 W. R. (Eng.), 262, 263 and (1884) 26 C. D. 700, at pages 710, 711. Of course, a plaintiff would not be allowed ordinarily to amend so as to raise fresh claims on a barred cause of action, 19 Q. B. D., page 394, 395, 396. It would seem clear, that, unless a plaint is rejected under Order 7, Rule 11, as not disclosing a cause of action, then under the Civil Procedure Code the court has the power for allowing the amendment of the petition in a proper case.

The third main question raised in the preliminary objection is whether, if the court has power to allow amendment, it should exercise that power. It follows, from what has been said above in discussing the first two questions, that in our opinion the case is a fit one for allowing amendment. Amendment, we take it is a stronger term than amplification, which is what is here required and which, *a fortiori* should ordinarily be allowed. No new substantial charge is hereby introduced, and we consider that we should be stifling enquiry—a course deprecated by Blackburn, J. in the Staley-bridge Case (1 O'M. and H. 72) if we did not permit fuller particulars to be given. We are satisfied that there was no wilful suppression of particulars in the present petition, and by the action which we shall now take we shall endure that the Respondent will not be taken by surprise. Under Order 6, Rule 5, C. P. C., therefore, we pass an order for further and better particulars which should be put in by the Petitioner by January 31, 1920.

F. W. KENNAWAY, *I.C.S.*
K. B. SHEKH ABDUL QUADIR, *Bar-at-Law*
KUNWAR DALIP SINGH, *Bar-at-Law*

BEHAR AND ORISSA LEGISLATIVE COUNCIL
NORTH-EAST DURBHANGA (NON-MOHOMMEDAN RURAL)

KASHI NATH MISRA (*Petitioner*)

versus

SHEO SHANKAR JHA (*Respondent*)

Representations made to voters that the Respondent was set up by Mr. Gandhi, and that they were to place their ballot papers in Mr. Gandhi's box, which was the green box of the Respondent in the centre, while Mr. Gandhi was admittedly regarded as a Mahatma, were held to amount to undue influence and fraud.

Where there are allegations of false representations having been made to voters at the time of the poll, but no report is found to have been made to the polling officer, the presumption is that no such false representations were in fact made.

Where after the hearing of the case had gone on for 12 days and the Respondent was about to close his case an application was made for leave to withdraw the petition, leave was refused on the ground that the Respondent, whose integrity the petition assailed was entitled to a

decision on the evidence, and also because the permission for withdrawal might involve an application for substitution under Rule 37 and an unnecessary prolongation of the proceedings.

It is said that the Respondent gave out that he was standing under Mr. Gandhi's orders. There is also evidence that at five polling stations, viz., Phulparas, Ladiana, Laheri, Madhubana and Jhanjharpur, the sub-agents of the Respondent were going about amongst the voters on the day of the election telling them to place their ballot papers in Mr. Gandhi's box which was the green box in the centre.

Since Mr Gandhi is admittedly regarded as a Mahatma, such representation if made by or on behalf of the Respondent would amount to fraud and judge influence and therefore to a corrupt practice under the provisions of Schedule 4, Paragraph 1, Rules 2 and 3 of the Election Rules. It is the case of the Respondent that no such representations were made by him or on his behalf.

Now, apart from the fact that the evidence adduced on this point for the Respondent appears to be considerably more reliable than that for the Petitioner, we think that the admitted failure of Petitioner's sub-agents, to make any complaint at the time is a clear indication of the falsity of their evidence. Had they heard these representations being made to voters they must have known, as indeed they admit, that a great fraud was being perpetrated and that the Petitioner's chance of success was being gravely prejudiced. In these circumstances the only possible course of conduct was to lay a complaint immediately before the Presiding Officer concerned. All such officers examined in this case have stated that they would have taken immediate action upon such complaint. The reason put forward for failure to complain, viz., that the sub-agents did not suppose that the Presiding Officers would take cognisance of anything which was going on outside the enclosure is evidently inadequate. For these reasons we entirely disbelieve the evidence.

The charges of corrupt practice have been disproved. The returned candidate has been duly elected. The Respondent will be entitled to recover from the Petitioner his costs which we assess at Rs.850 only.

DOUGLAS HOLLINS HAD KINGSFORD
MUHAMMAD TAHAR
RAI BAHADUR NARENDRA KRISHNA DATTA

BEHAR AND ORISSA LEGISLATIVE COUNCIL
THE PURNEA CASE (NON-MOHOMMEDAN RURAL)

BABU SHASHIBHUSHAN KONAR

RAI BAHADUR PIRTHI CHAND LAL CHOUDHRI

(*Petitioners*)

versus

BABU RAM PERSHAD (*Respondent*)

The rules do not require that an election agent should himself be a person qualified to be a candidate, or that he should be an elector of the constituency.

A wrong ejection of a nomination paper on the ground that the seconder is not an elector of the constituency is a non-compliance with the rules, and therefore evidence can be given in an election court to attack the Returning Officer's finding.

Though the rules are silent about the identification of proposers and seconders, yet they imply that the Returning Officer is to satisfy himself in the manner that he thinks most suitable that the nomination is according to law.

The right of a voter to vote, propose or second, cannot be taken away except on the ground of personal disability or want of status, and except as to cases coming within those grounds the register is conclusive, not only on the Returning Officer, but also on the Election Commissioners.

The Returning Officer rejected the nomination paper of the two petitioners and declared the Respondent as duly elected. Both candidates filed separate petitions, which were heard together.

In one case the Returning Officer has held that the candidate was not duly nominated because he had appointed as his election agent a person who was disqualified from acting as such by reason of his not being an elector of the constituency.

In our opinion the Returning Officer was clearly wrong. Under Rule 15 of the Election Rules only the following persons are debarred from acting as election agents: (1) persons found guilty of certain offences or reported by Election Commissioners as guilty of certain corrupt practices, and (2) persons, who having previously been candidates or election agents at an election to a legislative body constituted under the Act, have been found guilty of failure to lodge returns or lodging incorrect returns.

The rules do not require that an election agent shall himself be eligible for election as a member, much less that he should be an elector of the constituency.

The petition must therefore be allowed.

We assess the costs at Rs.100.

This finding would under ordinary circumstances make it unnecessary to consider the petition of the other candidate, but as a somewhat important point had been raised by him we will give a decision on it.

This candidate's seconder subscribed himself as "Modo Sahu, son of Munni Lal Sahu, elector of the Kusba Union Committee, circle No. 11." In the register of electors there is an elector of the name of Modo Sahu, son of Munni Sahu, but there is no Modo Sahu who is the son of Munni Lal Sahu. At the scrutiny of the nomination papers neither the candidate nor his representative, nor the proposer, nor the seconder put in an appearance and the Returning Officer held that it had not been shown that the seconder was an elector of the constituency. He accordingly of his own motion rejected the nomination paper.

Now the regulations framed under the Rule 13 of the Election Rules provide for the identification of voters. They do not provide expressly for the identification of proposers and seconders, but they seem to imply that the Returning Officer must satisfy himself in the manner most suitable that the nomination is in accordance with law. The nomination form does not require either a proposer or a seconder to subscribe the name of his father, but as the Electoral Roll describes electors by their father's names, it would seem to be the Returning Officer's duty to ascertain the father's names of the proposer and seconder unless there be other means of identification available.

The provisions of Rule 42 seem to show that evidence can be given at the hearing of an election petition against the Returning Officer's decision as to the identity of a voter, but it is not so clear whether the same rule should be followed in the matter of his decision as to the identity of proposers and seconders.

Now an election is void when there has been inter alia any material irregularity in regard to any nomination paper or any non-compliance with the rules which has affected the result. A wrong rejection of a nomination paper on the ground that the seconder is not an elector is a non-compliance with the rules; and therefore in our opinion evidence can be given in an election court to attack the Returning Officer's finding.

In this case Modo Sahu has given his evidence before us which remains unchallenged and establishes that he is the person who has been entered in the register as Modo Sahu, the son of Munni Sahu. It would seem that under the Election Rules with which we are concerned, as in England, the right of a voter if on

the register, to vote, propose or second, cannot be challenged on any ground other than that of personal disability or want of status; and that except as to cases coming within these grounds the register is conclusive not only upon the Returning Officer, but also upon the Election court on scrutiny. But where there is a doubt, evidence of identity may be given before the Returning Officer, (whose enquiry must be summary) as well as before the election court.

In England the Returning Officer's decision dismissing an objection to the validity of a nomination on the ground that the seconder was not a registered voter would seem to be final under Rule 13 of the rules framed under the Ballot Act, 1972, but his decision allowing an objection is subject to reversal on petition questioning the election or return. His decision on the right of a voters to vote is always open to reversal.

In the rules applicable to the case before us the Returning Officer's decision does not seem to enjoy the limited protection given in England and in our opinion it is open to the seconder in this case to give evidence that he is a registered elector. On the evidence given by him we are satisfied that he is the same person as Modo Sahu, the son of Munni Sahu.

In Moorhouse *v.* Linney, 15 Q. B. D. 273, it was held that an assenter who had subscribed a nomination paper as Charles Arther Burman which was his real name, was not competent to urge that he had been erroneously entered in the register as Charles Burman; and the Returning Officer's decision rejecting the nomination paper was upheld.

That case was decided on its special facts. Probably the elector's father's name was not given and there was no means of identifying him with the assenter. On the other hand the courts have held in England that a vote or nomination is valid when a voter recorded as P. S. and generally known as P. S. voted as J. P. S. (Exeter 6 O'M. and H. 235, per Channel J.); or where a nominator subscribes his surname in full but only the initials of his Christian names (Bowden *v.* Besley, 21 Q. B. D. 309); or where a nominator signs as Henry D. Davenport, though entered in roll as Henry D. Evereux Davenport (Harding *v.* Cornwell, 60 L. T. 959).

Applying the principle of these cases it seems to us that the Returning Officer's decision was erroneous and that the objection must succeed.

We are not unmindful of the fact that in India the use of double names and aliasses sanctioned often by religion and custom is far more prevalent than in England, and that the investigation

into differences between the Electoral Roll and the statements of voters and nominators may prove no light task for election courts; but the framers of the rules appear to have advisedly refrained from attaching finality to the Electoral Roll and, we presume that it was the intention of the Legislature in India to follow the English rule as to the correction of a misnomer.

The election must therefore be declared void. We assess the costs of hearing at Rs.100.

We have to observe that services of notice upon the Respondent by registered post in both cases have been duly proved. He has failed to appear.

B. K. MULLICK
J. F. W. JAMES
LALA DAMODAR PRASAD } *Commissioners*

THE PUNJAB LEGISLATIVE COUNCIL
THE ROHTAK CASE (NON-MOHOMMEDAN RURAL)

CHOUDHRI GOBARDHAN DAS (*Petitioner*)

versus

RAI BAHADUR CHOUDHRI LAL CHAND (*Respondent*)

The improper refusal of the Returning Officer to receive a nomination paper is a material irregularity which will be presumed to have materially affected the result of the election.

To constitute a corrupt practice it is essential that there should be a corrupt or wicked motive. Mere suspicion of such motive, however strong, cannot take the place of proof.

A Returning Officer cannot be made a Respondent to an election petition in India.

The word "restraint" in Rules 2 (*a*) and 2 (*b*) of Schedule 4 of the Punjab Electoral Rules means wrongful restraint as defined in the I. P. C. Section 339.

There were two constituencies in Rohtak district; one that of South-East Rohtak, of which the Officiating Deputy Commissioner Khawaja Rahim Bakhsh, was the Returning Officer, and the other of North-West Rohtak, of which Choudhri Sardar Ali, Revenue Assistant, was the Returning Officer. Choudhri Gobardhan Das was a candidate for North-West Rohtak.

On October 4, 1920, Choudhri Gobardhan Das, who is a very simple person, presented to the officiating Deputy Commissioner an application to be considered a candidate for membership

of the Legislative Council. The Officiating Deputy Commissioner passed this application to Lala Nand Lal, Extra Assistant Commissioner, who, on November 1, passed an order to the effect that the application was premature, that a proper form should be obtained from the District Office and filled up, and that it should be presented by Choudhri Gobardhan Das in person on November 8, before noon.

On November 8, between 9 and 10 A.M. Choudhri Gobardhan Das attempted to enter the court room of Choudhri Sardar Ali with a nomination paper or papers, but he had hardly entered the room before Choudhri Sardar Ali harshly ordered him to leave. Choudhri Gobardhan Das thereupon proceeded to the residence of Khwaja Rahim Bakhsh, Officiating Deputy Commissioner, about 100 yards from the District Courts; he was admitted to see him and made some representations to him, but, not being satisfied, repaired to the house of Mr. Lamacraft, Superintendent of Police, some 300 yards distant, complained to him and asked his help; he told Mr. Lamacraft that Choudhri Sardar Ali refused to take his nomination paper and had told him to clear out of his court; that he had reported this to the Officiating Deputy Commissioner who had told him that he would see him in court.

Mr. Lamacraft, whose action we consider to have been natural and proper, wrote a short note to the Officiating Deputy Commissioner, stating what Choudhri Gobardhan Das had told him and asking if the Officiating Deputy Commissioner could help him. This note Choudhri Gobardhan Das took to the house of the Officiating Deputy Commissioner who refused to take it and told him to come to his court whither he was about to proceed. Then, probably about 11-30 A.M., the Officiating Deputy Commissioner went over to his court room. There, at 11-15 A.M., Choudhri Gobardhan Das presented to him Mr. Lamacraft's letter and at least one nomination paper. The Officiating Deputy Commissioner states, that not approving of Choudhri Gobardhan Das's action in going to the Superintendent of Police, he only read one or two lines of the letter and then tore it up and threw it into the waste paper basket he took no action on it. As regards the nomination paper he says that he did not even look at this paper but sent it straight into his office; he adds that so far as he recollects he did not even know at that time that Choudhri Gobardhan Das was a candidate, because he did not look at the nomination paper and had forgotten about the previous application of October 4 already mentioned.

At 12-7 on the same day Choudhri Gobardhan Das presented a second nomination paper to Choudhri Sardar Ali, who at once

rejected it on the ground that it had been presented after 12 o clock, which was the latest time for the presentation of nomination papers.

On the following day, which was the day of the scrutiny, the Respondent Rai Bahadur Choudhri Lal Chand, O.B.E., being the only candidate, was declared by Choudhri Sardar Ali to be the returned candidate for the North-West Rohtak Constituency.

In the South-East Rohtak Constituency, of which the Officiating Deputy Commissioner was the Returning Officer, the scrutiny also took place on that day and Choudhri Gobardhan Das's nomination paper was of course rejected, since it was for the North-West Rohtak Constituency of which the Officiating Deputy Commissioner was the Returning Officer. There are other grounds also for its rejection which will be referred to later on.

The questions which we have to decide on these facts are—(1) Whether there has been any irregularity in respect of a nomination paper, and

(2) If so, whether the result of the election has been materially affected thereby (Rule 42(1) (*c*) of the Punjab Electoral Rules).

On the first question we find no difficulty; it is abundantly clear from the recital of the facts of the case, that there was more than one irregularity in respect of the nomination paper. It is sufficient for our purpose to record our finding that Choudhri Sardar Ali's action in refusing Choudhri Gobardhan Das's access to him in order to present his nomination paper, was a grave irregularity.

The second question involves more difficulty. It is argued for the Respondent that even if Choudhri Sardar Ali had received the nomination paper, that nomination paper would have inevitably been held to be invalid at the subsequent scrutiny because, as is shown by the Officiating Deputy Commissioner's order that paper was not signed by the seconder, whose name was not even in the paper, and that no stamped declaration (of the appointment of an election agent) on stamped paper was received with it. It is further pointed out though the Officiating Deputy Commissioner had not noticed it, that the name of the constituency is wrongly described as "Tehsil Gohana and Rohtak" instead of "North-West Rohtak Non-Muhammadan" and that the number of the proposers and seconders' name in the Electoral Roll are not given. It is therefore urged that the result of the election would have been the same and thus was not materially affected by Choudhri Sardar Ali's action. We have given this argument of our most earnest consideration, but find ourselves unable to accept it. The way in which we look at the matter is this:—it will be con-

ceded that it is obligatory on a Returning Officer to receive a nomination paper, relating to the constituency of which he is the Returning Officer, provided that it is presented to him within the time prescribed. It would be absurd to suppose otherwise, and it has not even been considered necessary by the legislature to lay down in so many words that a returning officer shall receive such a nomination paper so presented to him: it has indeed enjoined on him by Regulation 8 in Punjab Government Notification No. 9 dated July 31, 1920, that, on the receipt of a nomination paper within the time prescribed, he shall enter on it certain particulars, and this he obviously could not do unless he received it. Now the obligation to receive a nomination paper would not be laid upon the Returning Officer unless the carrying out of this obligation were not material to the election, as it manifestly is. Consequently, the moment a returning officer has improperly and without justification refused to receive a nomination paper sought to be presented to him within the time prescribed, the presumption arises that the result of the election has been materially affected. The improper refusal of a nomination paper by the Returning Officer, in our view, so grave an irregularity that this presumption would require, the strongest and most conclusive proof for its rebuttal and lies heavily on the Respondent to rebut the presumption so raised.

We do not think that the correctness of the above proposition is open to doubt, but in support of the general principle we may refer to the following cases in English Election Law, both statute and common. By Section 13 of the Ballot Act 1872, no election can be declared invalid by reason of a non-compliance with the rules of Parliamentary election if the election was conducted in accordance with the principles laid down in the body of the Act and such non-compliance did not affect the result of the election. The judgment in the Islington Case, 1901 (5 O'M. and H. 120) is to the effect that, where there have been transgressions of the law committed, even without corrupt motive by the Returning Officer and the Court sees that the effect of those transgressions was such that the election was not really conducted under the existing Election Laws, or it is open to reasonable doubt whether those transgressions may not have affected the result of an election and it is uncertain whether a candidate has really been elected in accordance with the laws in force relating to elections, the Court is then bound to declare the election void: further, that it rests on the Respondent to prove that such an infraction of the law did not, and could not affect the result: the previous case of Gribbin *v.* Kriker to the same effect was approved in the Islington

Case, (Rogers on Elections, vol. 2, pages 256 and 68-9, Edition of 1918). In dealing with cases of intimidation, which is only another form of undue influence, to which the circumstances of the present case render it analogous, the English Election judges have gone even further. This in the North Durham Case, 1874 (2 O'M. and H. 152) Baron Bramwell said that where the result of the election might have been affected it was in his judgment, no part of the duty of a judge to enter into a kind of scrutiny to see whether possibly or probably even or as a matter of conclusion upon the evidence, if the undue influence had not existed the result would have been different. What the judge had to do in that case, he observed, was to say that the burden of proof had been cast upon the constituency whose conduct was incriminated and, unless it could be shown that the gross amount of intimidation exercised could not possibly have affected the result of the election, it ought to be declared void. In the North Meath Case, 1892 (4 O'M. and H. 185) it was said by Andrews J. speaking of general spiritual intimidation "I think it clear that if the result of the election may be reasonably believed to have been affected thereby, the court cannot be called on, before voiding the election, to determine as a matter of fact, that, if this influence had not existed, the result of the election would have been different." In Davies *v.* Kensington, 1874 (L. R. 9 C. E. 720) a Returning Officer had wrongfully refused to nominate one of the candidates on the ground that he would not give security for the Returning Officer's expenses and the election was avoided in consequence.

Similarly in the Mayo Case, 1874 (2 O'M. and H. 191) where the sheriff has refused to receive a nomination because the candidate had not appointed an expense agent, the election was declared void.

We venture to express our concurrence in the dicta in the Islington, North Durham, and North Meath Cases, and, as a result do not consider that we are called on to determine as a matter of fact, that, if the Returning Officer Choudhri Sardar Ali had not been guilty of such grave irregularity, the result of the election would have been different. Although not feeling bound to do so, we will however, record our findings upon the points raised on behalf of the Respondent.

In the first place, we would observe that the question of the actual effect of Choudhri Sardar Ali's conduct on the election involves the initial difficulty, that, in order to determine that effect, we have to make inferences and assumptions as to the possible or probable future actions of parties which are of course of them-

selves hypothetical. We have to assume for instance, that Choudhri Sardar Ali would not have examined the nomination paper at the time and have pointed out any errors or omissions apparent on the face of it and that Choudhri Gobardhan Das would not then have gone away and corrected them or had them corrected. Again, we should have to assume that Choudhri Gobardhan Das would not have had another nomination prepared and put it in within the time prescribed: we know as a matter of actual fact, that he did have a second nomination paper prepared (whether before the first sent to Choudhri Sardar Ali or subsequently would be a matter of argument on the evidence), and that that nomination paper was actually put in, though, owing to the time which he spent in applying to the Deputy Commissioner and to Mr. Lamacraft, it was presented after the time prescribed. Secondly, we should have to find that, as a matter of fact, which would have to be strictly proved, the most serious defect in the nomination paper, namely, the omission of the name and signature of the seconder really existed. We are unable to accept the proposition that it has been proved that the name or signature of the seconder were really absent.

As regards the stamped declaration, one such declaration was duly attached to the other nomination paper presented to Choudhri Sardar Ali at 12-7 on November 8, and we have no reason to suppose that it could not have been made within the time allowed by law for the deposit of such declaration with the Returning Officer.

It is prescribed in Regulation 7 that a nomination paper must be delivered to the Returning Officer before noon on the date fixed. It was argued on behalf of the Petitioner that his other nomination paper which was presented at 12-7 to Choudhri Sardar Ali was really within the time within the meaning of the Regulation; "noon", it does not mean 12 o'clock but the time when the sun is at its meridian, and, since standard time according to which nomination paper is seven minutes late is some 22 minutes in advance of the local time at Rohtak, therefore the nomination paper was really presented well within time. In support of this argument the Petitioner's counsel referred to Punjab Government Notification No. 23 dated October 28, 1920 according to which the time for scrutiny of nomination paper is given as "12 o'clock noon" as showing that a distinction is drawn between "noon" and "12 o'clock" and *secondly*, he advanced the proposition that the distinction is deliberate since ordinary villagers would know noon as the exact middle of the day, but not 12 o'clock, and using the word "noon" the legislature had this idea in mind.

We are certainly not impressed with the reasons in support of

this argument. In the first place the interpretation sought to be placed upon the word "noon" is a fictitious one: the word should be given its ordinary accepted meaning. In Webster's Dictionary the definition is "the middle of the day"; "mid-day" "the time when the sun is on the meridian"; 12 o'clock in the day time, showing that there is no such single fixed meaning as the Petitioner's counsel would assign to the word "noon" in ordinary acceptance of the word, means 12 o'clock in the day time, and it would be for the Petitioner to show that it means anything else. *Secondly*, the reference to Notification No. 23 dated October 28, 1920, goes rather against the Petitioner than in his favour: in the expression "12 o'clock noon", the word "noon", if not phonetic is plainly to be taken as explanatory of the words "12 o'clock" as fixing them definitely to mid-day and not to midnight. *Thirdly*, we are entirely without evidence as what was the local time at Rohtak, or even whether any local time was kept at all, and whether it is different from standard time. *Fourthly*, as regards the argument that "noon" was meant to indicate a particular time to villagers we have not been shown that Government intended in this particular matter for the convenience of persons who were ignorant of standard time and no evidence has been put forward in support of the proposition. On the other hand, if Government had intended local time to be observed in these matters, we should have expected to find this definitely laid down and elaborate instructions given to enable Returning Officers throughout the province to ascertain the exact local time in each locality. But we find nothing of the sort. Lastly, the Petitioner himself never understood that noon meant anything but 12 o'clock, the argument finds no place in his petition and is manifestly an after thought. We reject it.

Allegations of corrupt practices were made against the Respondent, Khwaja Rahim Bakhsh, and Choudhri Sardar Ali, but from the facts as set out in this report it will be apparent that their conduct, could only fall, if it falls at all, within the category of undue influence, as defined in Rule 2 of Part 1 of Schedule IV namely "interference with the right of any person to stand as candidate by means of injury (or) restraint." If the Respondent had not connived at such interference, then if proved as against the two officials, the corrupt practice would be under Rule 1 of Part 2 of the Schedule. We desire here to observe that in respect of undue influence there is not complete correspondence between the Punjab Electoral Rules and the Indian Election Offences and Inquiries Act 39 of 1920. Section 171-C (1) of the Act is entirely general and makes it an offence (punishable under Section 171-F, with im-

prisonment or fine or both) for anyone voluntarily to interefere or attempt to interfere with the free exercise of any electoral right. The rule in the schedule to the Punjab Electoral Rules, however, lays down definitely what is to be considered interference and the definition of the right interfered with is also different to the definition of the Act.

Charge against the Respondent was not pressed.

Khawaja Rahim Bakhsh was not the Returning Officer of the constituency, he had no duties imposed upon him in connection with the election therefor, there is no proof whatever that he was endeavouring to assist the Respondent by failing to assist the Petitioner he did not interfere directly with the Petitioner's right to stand. We cannot find that he was guilty of any corrupt practice.

Choudhri Sardar Ali's case is open to more doubt. By refusing to allow Choudhri Gobardhan Das to approach him with his nomination paper it might be argued that he voluntarily interfered with the free exercise of the Petitioner's right to stand as a candidate within the meaning of Section 171-C (1) and 171-A (B) of the Indian Election Offences and Enquiries Act, thereby being guilty of an offence: but for the purpose of this report it is necessary to find that this action amounts to a corrupt practice within the meaning of Rule 2 (*b*) and (2) (*a*) of Schedule 4 of the Punjab Electoral Rules, that it was the interference with the Petitioner's right by means of "violence, injury, restraint, or fraud or any threat therefor."

Wrongful restraint is defined in Section 339 of the Indian Penal Code as the voluntary obstruction of any persons so as to proceed. And although the word "wrongful" is not found in the rule quoted, we think that the definition may be adopted, for the purpose of this case, as the meaning to be attached to the word "restraint" in the Rule.

That the Petitioner's right was directly interfered with and that he was obstructed by Choudhri Sardar Ali is plain, but we should require it still to be shown that the obstruction was voluntary: it will be noticed that the word "voluntarily" is also used in Section 171 of the Election Offences and Enquiries Act. "Voluntarily" is thus defined in Section 39 of the Indian Penal Code: "A person is said to cause an effect voluntarily when he causes it by means whereby he intended to cause it or by means which at the time of employing those means he knew or had reason to believe to be likely to cause it."

The question of intention thus becomes essential, and this is the case also in the English Law dealing with corrupt practices at an election. There "to constitute a corrupt practice it is essential

that here should be a corrupt or wicked motive (Fraser's Law of Parliamentary Elections and Election Petitions, 2nd Edition, page 141). Now there is no real evidence of corrupt motive on Choudhri Sardar Ali's part. He is not shown to have been acting with the objection of favouring the Respondent and we think that we should not be fully justified in drawing any inference that this was his object. Mere suspicion, however strong, cannot take the place of proof. It is possible to hold the view that he was unaware that Choudhri Gobardhan Das was an intending candidate for election, that he was engaged in other work at the time when Choudhri Gobardhan Das sought to enter his court and that, not wishing to be disturbed he ordered him to go out; if this view is taken, then although Choudhri Sardar Ali's action may be open to objection on the ground that he ought not to have refused admission to any one on the day on which nomination papers were to be received, yet it amounted to no more than a default in his duties as an official. If this was so, it is unfortunate that Choudhri Sardar Ali did not frankly admit the fact instead of denying, and adhering to his denial that he had seen Choudhri Gobardhan Das before noon on that day. We may remark here that, although Choudhri Sardar Ali appeared twice before us and had the opportunity of stating anything he wished in defence of his conduct he appeared only as a witness, he was not specifically put upon his defence and he was unrepresented by counsel. There is no provision in the Indian as there is in the English Law for the Returning Officer being made a Respondent in the case.

In the absence of sufficient proof of corrupt motive or intention it would not be safe to find that Choudhri Sardar Ali has been guilty of a corrupt practice.

Parties to bear their own costs under the circumstances.

F. W. KENNAWAY, *I. C. S.*

KHAN BAHADUR SHEIKH ABDUL QADIR, *Bar-at-Law*

KUNWAR DALIP SINGH, *Bar-at-Law*

UNITED PROVINCES LEGISLATIVE COUNCIL
SAHARANPORE DISTRICT (NON-MOHOMMEDAN RURAL)

LALA CHAMAN LAL (*Petitioner*)

versus

LALA SHADI LAL (*Respondent*)

What of material facts and particulars required by Rule 31 is a defect which renders the petition liable to be rejected.

A petition cannot be amended under Order 6, Rule 17 C. P. C., as the Code has been made applicable by Rule 35 only to the conduct of the enquiry, and not to the petition itself.

There is no provision in the Electoral Rules for the amendment of a petition.

Where the Petitioner claims the seat for himself, it is obligatory on him to join as Respondents to the petition all other candidates who were nominated at the election. Failure to do so renders the petition liable to be dismissed, and no candidate can be added as a party after the expiry of the statutory period provided for filing of petitions.

The Petitioner was one of several candidates for membership to the United Provinces Legislative Council as representing the Rural Constituency of Saharanpore District. He was defeated by the Respondent by about 3,700 votes. In his petition he seeks to have the latter's election declared void, and prays that he himself be declared duly elected, on the ground that the successful candidate committed certain corrupt practices which are set forth in Paragraph 4 of his petition.

In Paragraph 5 it is stated that "if on further enquiry further discoveries are made, then fresh particulars shall be duly added to the petition." This promise has been kept up by the presentation on February 14, 1921, to the President of the Commission of what is in effect a supplementary petition under Rule 30. In this there are fresh particulars which all relate to alleged failures on the part of the presiding officers at different polling stations to observe the rules prescribed for the conduct of the election.

In our opinion the petition is defective, in that it does not specify the material facts and particulars of the alleged corrupt practices as was necessary under Rule 31 of the Election Rules, and the general allegations contained in it are too vague and indefinite to admit of a specific enquiry.

Rule 31 lays it down that the petition "shall contain a state-

ment in concise form of the material facts on which the Petitioner relies and the particulars of any corrupt practice which he alleges." There has been some discussion as to the correct interpretation of the terms used in this rule, and in the absence of any previous Indian decision we have turned for guidance to the reported English cases dealing with Election Petitions. Several of these are quoted by Mr. Hammond in his book "Indian Electioneering". These make it clear that in such a case as the present one the particulars required are the names of persons whose vehicles were hired, the names of persons who hired them, the sums paid, the names of voters who were carried and so forth. The persons presenting an Election Petition are bound "to tell the most they can at the time these particulars are given, and, at all events before the trial, to tell as much as they can to put the sitting member and his counsel upon enquiry and to prevent surprise and expense". "To deliver particulars which contain nothing but the names of the candidates and the character of the offence suggested and leave everything else in blank and to attempt under them to fish out some possible material from which the blank may be filled up is an abuse of procedure," (op. cit., pages 153, 154). In the petition now before us no information whatever has been supplied beyond the name of the candidate and the character of the offence suggested, and not one single detail is given which would enable the Respondent to make enquiry and collect evidence to meet the charges brought against him.

It has been argued by the learned counsel for the Petitioner that his client has fallen into this error owing to a desire to attain conciseness. This argument carries no weight. It would have been easy enough for him to follow the English practice and enter the particulars in a schedule attached to the petition. It is further argued that the opposite party was to blame for not asking for any particulars which he might find necessary to enable him to meet the case set up. The answer to this is that it is no part of the Respondent's duty to help out the Petitioner's case by repairing his omissions.

Finally, it is claimed that Rule 35 directs the Commissioners to enquire into petitions "as nearly as may be in accordance with procedure applicable under the Civil Procedure Code, 1908, to the trial of suits," and that we ought to amend this petition and supply the missing particulars now. The Petitioner's counsel professes to rely on Order 6, Rule 17, Civil Procedure Code. We hold, however, that Rule 35 only makes the Civil Procedure Code applicable to the conduct of the enquiry and not to the petition.

In the case of an ordinary civil suit the trial court is em-

powered to accept, reject, or at any time amend the plaint. This is not so with an Election Petition, which under Rule 30 can be accepted within a limited period of 14 days from the date of publication of the result of the election. Further, there is no provision anywhere in the Act or the Rules for the amendment of a petition. Indeed any such amendment appears contrary to the whole tenor and spirit of the rules. The short time limit permitted and the insistance in Rule 30 on furnishing at once of the full particulars are evidently intended to ensure that the returned candidate shall without any delay be informed of the exact nature of the charges which he will have to meet. To allow amendments and additions would be to defeat this very salutory provision.

We find that in failing to give in his petition the material facts and particulars required by Rule 31 the Petitioner has failed to show that anything took place at the election which would render it void. We also find that his petition is further defective, in that he has not joined as Respondents the other candidates. We therefore, decide the petition in favour of the Respondent.

We recommend that the Petitioner pay the Respondent's costs which we assess at Rs.600.

F. D. SIMPSON
E. R. NEAVE
MUHAMMAD SHAFI

INDIAN LEGISLATIVE ASSEMBLY
THE SALEM AND COIMBATORE CUM NORTH ARCOT. CASE (NON-MOHOMMEDAN RURAL)

PERIANA GOUNDER AND PERUMALASAMI GOUNDAN (*Petitioners*)

versus

M. SAMBANDA MUDALIAR (*Respondent*)

An election petition is not required to be presented to the Governor-General by the Petitioner in person, It may be sent by post.

But even assuming that the petition was required to be so presented by the Petitioner personally, its acceptance by the Governor-General would amount to a waiver of this irregularity, if there was any, and no objection on that ground could be taken subsequently? Nor is it open to the Election Commission, which is a statutory body, to be created by His Excellency only after His Excellency is satisfied of the previous requisites having been complied with, to go into this question, or to try it.

If transgressions of the law by the officials are admitted or proved and the court sees that it is open to reasonable doubt whether these transgressions may not have affected the result of the election, the Court is bound to declare the election void.

The change of a polling station by the Polling Officer, without sufficient notice to the constituency, was held to be a material irregularity which was held to be enough to avoid an election, when the majority in favour of the Respondent was only 7, and it was proved that 12 or 13 voters had in fact gone to record their votes to the place originally fixed for polling.

A preliminary objection has been taken on behalf of the Respondent that the petition not having been presented to His Excellency the Governor-General in person, but having been sent by post, is not valid. We have overruled the preliminary objection for two reasons.

1. Assuming that the petition should be presented personally by the Petitioners to His Excellency, His Excellency having as a matter of fact accepted the said petition and also the amount of Rs.1,000 deposited by the Petitioners, the irregularity, if any, has been waived and no objection on that score could be taken subsequently. The petition is signed and verified and there is no allegation that it was not the petition of the present Petitioners.

2. His Excellency being satisfied that the prior requisites, which have to be complied with before a commission is appointed for the trial of the petition, it is not open to this commission which is a statutory body, to be created by His Excellency only after His Excellency is satisfied of the previous requisites being complied with, to go into this question, and the said question has not been in any way reserved for trial by these Commissioners.

The cases in I. L. R. 15 Mad. 137 and I. L. R. 19 Mad. 354 do not appear to us to contain anything contrary to this view. Whereas the decision in I. L. R. 8 Mad. 411 unquestionably supports it. We have accordingly overruled the preliminary objection raised by the learned pleader for the Respondent. It should be noted that under Rule 30, the petition is to be presented within 14 days from the date of the publication in the Gazette of the results, and His Excellency the Governor-General for obvious reasons could not be predicted to be at any particular place on any of the fourteen days allowed by Rule 30, and difficulty might be experienced by any candidate or elector of any part of India who may like to present such a petition if personal presentation is the only mode permissible. The argument of the Petitioners, viz., that no particular mode of presentation—such as by personal deliyery by the Petitioners to His Excellency personally being specified, the ordinary mode of constituting the post office their agents for such presentation is open to

them need not be discussed in the circumstances.

While for the purposes of the argument, we have assumed that the first step in the reasoning of the Petitioners is correct, viz., that presentation prima facie means presentation in person, we wish it clearly to be understood that we give no assent to that view, though we do not think it necessary to decide that point.

The Petitioner confined himself to the irregularities mentioned in respect of Polling Station No. 18, Dharampuri Registration Area. The case for the Petitioners is that the Polling Station fixed in the Notification in respect of the election to the Legislative Assembly for the Dharampuri Registration Area was the Buddireddipatti Railway Station and that on November 30, 1920, the date fixed for the election, there was no polling officer or ballot box or voting papers available at the railway station and consequently the voters had no opportunity to record their votes. The case for the Respondent is that though as a matter of fact there was no polling office or ballot box or voting papers at the said railway station, yet the polling took place at the Local Fund School in the village of Buddireddipatti about 6 furlongs from the Railway Station and the due intimation was given to the voters by beat of tom tom at the Railway Station.

It was argued that it was not necessary under the rules to notify the particular building at which the polling was to take place and that therefore it could not be said that the voters were misled by any irregularity. Although no doubt it was open to the authorities to have said that the voting would take place at Buddireddipatti, simpliciter, inasmuch as they fixed the Railway Station as the place where the polling would take place, the argument that the voters were bound to treat the words, "the Railway Station" as mere surpusage is, in our opinion, utterly unsound.

After discussing the evidence the learned Commissioners came to the conclusion that "in the circumstances the conclusion seems to be inevitable that there was really no tom tom or any other mode of notice given at the Railway station, at any rate till about 11 A.M."

The further question arises "What is the exact result of this irregularity in this election?" Under Clause 3(1c) of the regulations framed under Section 13 of the Electoral Rules, not less than 30 days' notice should be given of, among other things, the place or places where the votes of the electors would be taken. We are inclined to the opinion that, if for any reason, the place originally fixed should turn out to not available at the last moment, polling would be valid if it took place at another place in the neighbourhood, provided due notice was given to the electors of the change of place and the place was not otherwise inconvenient to the voters, which would depend on the circumstances of each case. Here we

find as a fact that no effective steps were taken during a fair portion of the polling period to give intimation of the change of place to the electors, who were informed in the first instance that the Railway station was the polling booth, and that, over and above the orders given by the presiding officer and the village Munsif, notice was not in fact published either by tom tom or by otherwise at the Railway station, at least till 11 A.M. In these circumstances it will be for the Respondent to show that the voters were not prejudiced. The cases reported in volume 2 O'M. and H. page 77 and volume 3 O'Malley and Hardcastle, page 184 support our view. Mr. Justice Grove at page 80 of the 2nd volume of O'Malley and Hardcastle Reports points out that two questions arise for decision, (1) whether the election was conducted in accordance with the principles of the Act, and (2) whether the non-compliance with the rules had affected the result of the election. He thought that the real point was whether the constituency had an opportunity of fairly recording their votes for the different candidates. (It would be sailing uncommonly near the wind and as he thought violating the spirit of the Act to enquire how a voter would have voted had circumstances been different.) No tribunal can possibly say what would or might have taken place under different circumstances. One of the principles of the Ballot Act is that voters could not be compelled to disclose how they voted except upon a scrutiny after a vote had been declared invalid. Here the majority is only seven and there were at least 12 voters who were unable to vote. As mentioned in the judgment of Mr. Justice Kennedy concurred in by Mr. Justice Darling in the Islington Case, 5 O'Malley and Hardcastle, page 120 to 125, if transgressions of law by the officials being admitted or proved the court sees that it is open to doubt whether these transgressions may not have affected the result, the court is then bound to declare the election void. It appears to us that this is the view of the law which has generally been recognised and acted upon by the tribunals which have dealt with election matters. Again at page 130, "the gist of the judgment of the Chief Justice, Monoghan, is that in such a case the Petitioner is not called upon to prove affirmatively that the result of the election was affected by the proved transgression of the law but that the Respondent must satisfy the court that it was not and could not be affected. "The case in 4 O'Malley and Hardcastle, page 162 is really not against this view, since it appears at page 164 of the report that the election of the successful candidate in that case was by the majority of electors, which is not the case here. Though the other voters 12 or 13 in number have not been examined, we have got the positive evidence of Mr. Venkatachariar that two of them who were proceed-

ing to the Railway station to record their vote returned on hearing from Venkatachariar of what had happened at the station, and that the other voters who evidently interested themselves in the election and naturally went to Venkatachariar's house at about 3 P.M. to get information concerning polling station, etc., did not proceed to the station to record their votes after receiving the information given by Venkatachariar. We only allude to this evidence as showing that there is ground for supporting that the result of the election was actually affected by what took place; and we do not regard it as part of the Petitioner's case which to our mind is sufficiently established by proof that the irregularity might have had the effect of disfranchising a part of the electorate.

We think that the result of the election has been materially affected by the non-compliance with the provisions of the Act and the rules and the regulations made thereunder in the matter of the fixing of the polling station at the Buddireddipatti Railway Station and accordingly must declare that the election of the returned candidate shall be void.

We make no order as to costs.

THE HON'BLE MR. JUSTICE COUTTS TROTTER
M. R. RY. C. V. ANANTHAKRISHNA AYYAR AVERGAL
M. R. RY. VENKATASUBHA RAO GARU

BEHAR AND ORISSA LEGISLATIVE COUNCIL
THE SHAHABAD CENTRAL (NON-MOHOMMEDAN RURAL)

RAI SAHEB, RAM RAN VIJAY SINHA (*Petitioner*)

versus

BRAJA NANDAN SAHAY (*Respondent*)

A declaration made by a candidate appointing an election agent does not come within the purview of article 4 of Schedule 1 of the Indian Stamp Act, and therefore is not required to be on stamp paper.

The improper rejection of a nomination paper on the ground that the declaration of election agent was not on a stamp paper is a material irregularity, which is sufficient to avoid an election.

It appears that the declaration made by the returned candidate appointing an election agent under Rule 11 of the Election Rules was stamped in accordance with Article 4, Schedule 1 of the Indian Stamp Act. The declarations made by the other five candidates, of whom the Petitioner was one, bore no stamp at all. The result

was that the Returning Officer held that there was only one candidate duly nominated, and treating the election as non-contested one, he declared the Respondent to be duly elected.

Now the definitions of affidavit and oath in the General Clauses Act of 1897 and the provisions of the Indian Oaths Act of 1873 show that an affidavit may be made either by swearing before the prescribed officer or affirming or declaring as the case may be before such officer, when the deponent is unable or unwilling to take the oath by reason of his religious belief under certain circumstances the law allows statements in writing so prepared to be given in proof of the truth of their contents, and Article 4 of Schedule 1 of the Indian Stamp Act seems to apply to such documents only. In this connection a reference to the provisions of the English Stamp Act (54 and 55 Vic. c. 39) is helpful. That Act requires a stamp duty not on affidavits but also on statutory declarations which by Section 21 of the Interpretation Act (52 and 53 Vic. c. 63) mean declarations made by virtue of the Statutory Declaration Act of 1885; 5 and 6 William 4, Chap. 62). This latter Act was enacted for the more effectual abolition of oaths and affirmations taken and made in various departments of the state and to substitute declarations in lieu thereof and for the more entire suppression of voluntary and extra judicial oaths and affidavits. These declarations might be made by any person without reference to his religious belief, and a consideration of the definition of oath and affidavit in Section 3 of the Interpretation Act would seem to lead to the conclusion that the expression affidavit does not include such statutory declarations. We have not been shown any enactment of the Indian Legislature providing for statutory declarations in lieu of affidavits, and the conclusion seems irresistible that even if any such enactment exists it is the intention of Article 4 of Schedule 1 of the Indian Stamp Act to exclude simple declarations and to confine its scope to declarations made by persons who would, but for some special exemption based on religious belief, have been required to swear affidavits.

Now there is nothing in the Election Rules which shows that in case of a declaration appointing an election agent a simple declaration has for any class of cases been substituted for an oath or affirmation, and therefore article 4 is in our opinion inapplicable. On the contrary the provisions requiring that the return of election expenses shall be verified on oath or affirmation seems to conform to the view that it is not every declaration that comes within the perview of article 4.

We accordingly find that the returned candidate has not been duly elected.

We direct the Respondent to pay the Petitioner his costs, which we fix at Rs.150.

B. K. MULLICK
J. F. W. JAMES
LALA DAMODAR PRASAD } *Commissioners*

THE PUNJAB LEGISLATIVE COUNCIL
THE SHEIKHUPURA CASE
(MOHOMMEDAN RURAL)

KHAN DAURAN KHAN (*Petitioner*)

versus

M. MAHABAT KHAN, 2. CHAUDHRI SARBALAND 3. SYED MARATAB ALI SHAH, 4. CHAUDHRI ROSHAN DIN AND 5. MAULVI INSHA ULLAH

The threat to voters of having their cattle stolen held out by the Respondent and his agents, persons who were heads of gangs of notorious cattle stealers, was held sufficient within the meaning of election law to avoid the election.

Where there are more than one candidates, the petitioner in order to succeed in a claim for the seat must show that but for the alleged corrupt practices, the scale would have been turned in favour of the Petitioner.

The law of agency in election matters goes much further than the ordinary law of principal and agent, and in the absence of express appointment agency is to be inferred from facts.

Where two persons were proved to have canvassed for the Respondent to such an extent that he must have known of it, but he never repudiated their actions, he was deemed to have adopted them as his agents within the meaning of election law.

A petition which gives particulars of acts alleged cannot be summarily rejected for want of better particulars. Further and better particulars can be given subsequently under the Civil Procedure Code, provided that the Petitioner is not permitted to make out a new case.

Under the head of threats of injury it is charged against the Respondent that, during the canvassing which took place before the polling day, the Respondent and the agents of his threatened voters in various villages with theft of their cattle, if they voted for the Petitioner rather than for the Respondent. It is alleged (1) that the Respondent is regarded as the head of the Wagah clan of the

tribe of Jangalis who are the original inhabitants of the Bar country, of which a considerable part of the Sheikhupura District consists; this tract has been colonised by settlers from other parts of the province in consequence of the introduction of canal irrigation; (2) that these Jangalis, including the Wagahs are notorious cattle-lifters, and, as such, are regarded with apprehension by the colonists; and (3) that consequently such threats would come home with special force to those colonists, who were thus threatened. We have no hesitation in finding that the allegations set out have been amply proved by the evidence put before us.

For the Respondent it is not denied that he is the head of the Wagah clan, and the attempt to show that the Wagah are not notorious as cattle-lifters has in our opinion, entirely failed.

For the purposes of this report it is not really necessary for us to decide whether the Respondent himself is a rassagir, or a member of a gang of cattle-thieves; there is, it is true, a mass of oral evidence to this effect which is countered by oral evidence of the opposite tendency and by production of a large number of certificates of good work from officials including police officers, granted to the Respondent at various times during the last 20 years. We are not inclined to look upon the oral evidence or these certificates as excluding the possibility of the truth of the charge, but be that as it may, our conclusion is that, whether rightly or wrongly, he is regarded by the colonists as in league with the Wagahs in the matter of cattle lifting and as being able to control their activities in this direction. The only point therefore remaining for discussion in this connection is whether the threats charged were in fact uttered to any voter by the Respondent or any of his agents. We do not consider it either necessary or desirable to name witnesses and after prolonged consideration of all the evidence, and weighing its value with the greatest care in the light of the lengthy arguments addressed to us, we record only our finding that the use of threats is proved against Respondent M. Muhabbat Khan himself.

We find that Rahmat of Bhattianwala and Hasham of Dharor, who are notorious rassagirs, were guilty of using threats of the same kind in numerous villages, in order to secure votes for the Respondent. We also find that they must be held to be agents of the Respondent; they are proved to have canvassed for him to such an extent that he must have known of it: he never repudiated their actions, and must be held to have adopted them as agents, although there is no direct proof of their actual appointment as such. The law of agency in election matters has long been held in England to go much further than the ordinary law of principle and agent as said on page 76 of

Fraser's Law of Parliamentary Elections and Election Petitions (2nd Edition), "where there is no express appointment the agency must be inferred from facts," and again on page 81 of the same work, "the fact that a candidate has expressly or impliedly employed any person to canvass for him will generally, but not necessarily, constitute that person his agent." In Akefield Case (2 O'M. and H. page 103) Grove, J., said "a candidate is responsible generally, you may say, for the deeds of those who to his knowledge, for the purposes of promoting his election, canvass and do such other acts as may tend to promote his election, provided that the candidate or his authorised agent has reasonable knowledge that those persons are so acting with that object." The same judge in Wigan Case (4 O'M. and H. page 12) laid down that "there may be cases in which canvassing has always been held to be strong evidence of agency and evidence which requires a very strong case to rebut it, if it can be rebutted." Applying these principles to the evidence before us, we find the fact of agency proved, and decide accordingly.

It follows from this decision that the petitioner is not entitled to a declaration that he has himself been duly elected. He has failed to show, as he endeavoured to do by the evidence last discussed, that he obtained a clear majority over the returned candidate, and we cannot hold that the votes given for that candidate are absolutely thrown away. There is no provision in the Indian Law to this effect and the English Law is against any such proposition; in this connection we need only refer to the authorities quoted on page 130 of Rogers on Election, Volume 2, edition of 1918.

We humbly advise His Excellency the Governor that M. Muhabbat Khan has not been duly elected.

We find charges proved against M. Muhabbat Khan, Rahmat, son of Lakha, of Bhattianwala, and Hasham, son of Dasaundhi, of Dharor, being that of undue influence by threat of injury, falling under Rule 2 of Schedule 4 of the Punjab Electoral Rules. As required by Rule 45 of the same rules we report accordingly.

We award the Petitioner a lump sum of Rs.1,000 as costs.

Annexture to the Report.

In this case an objection has been taken in the Respondent's written statement to paragraph 6 of the Election Petition on the ground that the allegations made in it are vague and indefinite, and it has been urged that the petition should be dismissed for want of necessary particulars. We do not see anything in the Punjab Electoral Rules justifying the view that a petition, which gives particulars of the acts relied on, is to be summarily rejected for want

of fuller particulars. On the contrary there is authority in the Civil Procedure Code for allowing further and better particulars to be given with the reservation that the Petitioner is not to be permitted to make out a new case. The object of furnishing such particulars is to avoid surprise to the Respondent, and from the point of view they are as necessary in the interests of parties concerned as those of justice and fair play. The practice in England also supports the procedure. The petition in the present case gives the material facts on which the petitioner relies, and so far as the supplying of further particulars goes, the Petitioner in his re-application to the written statement has not only expressed a willingness to supply such particulars as may be ordered, but has actually supplied them to an extent which, we think, should give the other party the information they can reasonably require to be furnished to them, without giving details of the whole of the evidence on which the Petitioner is going to rely.

F. W. KENNAWAY, *I.C.S.*
ABDUL QUADIR, *Bar-at-Law*
DALIP SINGH, *Bar-at-Law*

MADRAS LEGISLATIVE COUNCIL
THE TANJORE CASE (NON-MOHOMMEDAN RURAL)

V. P. PAKKARISWAMI PILLAI (*Petitioner*)

versus

RAO BAHADUR VENKATA RAMA PILLAI (*Respondent*)

Where on account of serious floods which occurred shortly before November 30, the day fixed for the poll, making it very difficult and at places impossible for the electors to record their votes, and the Returning Officer with the sanction of the Local Government issued instructions to Presiding Officers to let the poll remain open upto December 6, but on account of the flood the telegrams did not reach several polling stations, and the poll on such stations was closed on the 30th, held that it was a material irregularity which affected the result of the election, inasmuch as it deprived large numbers of electors of a right which has accrued to them, namely of exercising their suffrage till a later date.

A recount can only be granted in cases which are substantiated by specific instances by reliable *prima facie* evidence. The original date fixed for the election was November 30, 1920. For several weeks before the day arrived, the Tanjore District was visited by

severe floods rendering the movements of the people and the methods of communication difficult, and in some cases impossible; and accordingly on November 28, the Returning Officer, who was Mr. Dutta, the Collector of the Tanjore District, sought authority from Government to do what he thought to be necessary in the circumstances to preserve the rights of voters, to record their votes and to render those votes effective. Accordingly he received on November 29, 1920, a telegram from the Government of which the material part is this: "In special circumstances Government give you discretion to postpone opening of poll in cases where ballot papers cannot arrive at polling station in proper time; also to keep open poll for as many days as may be necessary in cases where floods make it impossible for voters to reach polling stations tomorrow". On that Mr. Dutta sent out instructions to the Divisional Officers and Chairmen of Municipal Councils in the district in the following terms. We are only reading the material part: "Where owing to weather, polling cannot be opened 3, it should be opened December 4, and continue till December 6, inclusive. Inform all polling officers under you immediately."

Those instructions were sent to all Divisional Officers and the Chairmen of Municipal Councils in the constituency. The result was that in most of the divisions polling did go on from November 30 till December 3, but in two Taluks Pattukkotai and Arantangi, the instructions did not reach the officer concerned. The telegraph wires were cut by floods, and the messengers with whom duplicates were sent by hand could not reach their destination and the result was that the instructions were not received by the officers in question until December 4: and accordingly in fifteen polling stations in those two Taluks the boxes were closed and returned after November 30. In one station, Gandharvakotta, the box having reached the Collector on the morning of December 1, he sent it back to the officer with instructions to re-open the poll which was accordingly, done. We are not called upon to decide the effect of that and whether it was lawful order or not; because the number of persons who voted in all in Gandharvakotta was 36 and the majority of the successful leading candidate was 127, so that, even supposing that all those votes would have been adverse to the successful candidate it would not have affected the result of the election and, could not have affected it. But with regard to the other polling stations very much more difficult questions arise.

The argument for the Respondent appears to be this: What Government did was to invest the collector with a discretion to give further extension by way of indulgence to the voters. Therefore, if he did not, in fact from whatever cause, succeed in con-

ferring that indulgence upon the voters, then there is no more to be said and matters must rest where they stand. On the other side it is said that what he was invested with was an authority, not merely to grant an indulgence to the voters, but to confer upon them a definite right, viz., the right to exercise their vote at any time upto the evening of December 3. There is nothing in the rules to guide us as to what is the proper course to adopt in unforseen eventualities like this, and we have to come to a conclusion on it as best as we can, practically unassisted by anything except the analogies that were suggested by the learned counsel in argument. Of course, arguing by analogy where the subjects cannot be in *pari materia* is always likely to break down just at the point where the analogy is sought to be pressed home. We feel very great difficulty as to what is the right view to take, but on the whole we have come to the conclusion that, when the Collector despatched the telegram of November 29, addressed to the Divisional Officers and the Chairmen of the Municipal Councils, he had effectively passed an order extending the time for polling, and that the fact that owing to natural cause the telegrams did not reach their respective destinations does not detract from the position that he had committed himself to these orders. We, therefore, are of opinion that, when the polling booths were closed on November 30, though no one was to blame for it, yet it was an irregularity in the conduct of the election, inasmuch as it deprived large number of voters of a right which had already accrued to them to exercise their suffrage at a later date, viz., till December 3.

With regard to the other arguments that the whole proceedings including the order of the Government and the order of the Collector to his subordinate officers were ultra vires, we do not feel that we need go into it, because in our opinion the Respondent would be no better off even if that argument were sound. The effect would be that a large number of people would have given their votes under a misapprehension as to what their rights were whereas they were only in fact entitled to record their votes on the 30th they abstained from doing so till December 3. In such circumstances it is obvious, on the authority of the cases that we have considered carefully in the Coimbatore case, that that would be a material irregularity which would obviously affect the result of the election and would necessarily lead to the same result of the election as the other process of reasoning, viz., the setting aside of the election. With great regret we feel compelled to set aside this election because there cannot be the slightest doubt—and it is quite frankly admitted by the counsel for the Respondent—that, if all the voters of those stations were in fact wrongfully disfranchised,

it would not be likely to give a material effect upon the result of the election.

During the course of the enquiry an application was made to us for a recount of the votes. It rested on the nebulous allegation of the agent about the counting of batches of votes twice over and we therefore refused to grant an application of that nature on such slender materials. It is well-established law that a recount will only be granted in cases which are substantiated by specific instances and by reliable, *prima facie* evidence.

We must therefore declare the election as a whole void. There will be no order as to costs.

V. M. COUTTS TROTTER
C. V. ANANTAKRISHNA AYYAR } *Commissioners*
M. VENKATASUBBA RAO

BENGAL LEGISLATIVE COUNCIL
THE TWENTY-FOUR PARGANAS CASE
(NON-MOHOMMEDAN URBAN)

RAI YATINDRA NATH CHOUDHRY (*Petitioner*)

versus

SURENDRA NATH ROY (*Respondent*)

The non-compliance with the rules relating to the secrecy of the ballot was held not to vitiate when it was not proved that the result of the election had been materially affected thereby.

Issue No. 4. Has there been any non-compliance with the provisions of Section 12(4) of the Bengal Electoral Rules and Bengal Electoral Regulations Nos. 22, 27 and 29 as specifically alleged in the petition?

Issue No. 5. If there has been any such non-compliance has the result of the election been materially affected thereby?

Issue No. 4. Before we proceed to discuss this issue we think it will be better if we would describe here a little the arrangements that were made for recording of votes in the Behala Municipality. The Behala Municipal Area was divided into six polling stations and these six polling stations were—the Behala Vernacular School, the Behala Brahma Samaj, the Behala Municipal Office, the Barisa Municipal Office, the Barisa Charitable Dispensary and Behala Kamarghat. There were three Presiding Officers appointed for these six polling stations, and Hon'ble S. K. Sinha, Assistant Magistrate of

Alipore, was out incharge of the polling stations at the Behala Vernacular School and Barisa High School, while the polling stations at the Brahma Samaj and Behala Kamarghat were put in charge of a Deputy Collector Babu Debendra Nath Bose, and the remaining two polling stations, viz., Behala Municipal Office and Barisa Charitable Dispensary were put in charge of another Deputy Collector Babu Sashi Bhushan Bhattacharji. According to the Petitioner's case at all these polling stations with the exception of those presided over by Babu Sashi Bhushan Bhattacharji there was no secrecy of voting observed, that the illiterate voters were asked in a loud voice whom they wanted to vote for, that the illiterate voters replied inequally loud voice, that the marking of the ballot papers was in the majority of cases done in such a way that it could be seen by other people, and that at the polling stations presided over by Hon'ble S. K. Sinha the voters in almost all cases, literate or illiterate, were asked by the polling officer whom they voted for, that the polling officer himself put the cross mark on the ballot papers and after folding up the ballot papers put them himself into the ballot box. The Petitioner also stated that at the Behala Brahma Samaj polling station presided over by Babu Debendra Nath Bose, there was present in the inner enclosure one Sidhi Nath Chatterji, the Vice-Chairman of Behala Municipality, and one Kristadhan Mukerji, a Commissioner of the same Municipality, was present in the inner enclosure of the Behala Vernacular School polling station which was presided over by the Hon'ble S. K. Sinha. According to the Petitioner's case these persons, Sidhi Nath Chatterji and Kristadhan Mukerji, had no business to be present inside the polling booth, and the Presiding Officers by allowing them to remain there acted in contravention of the provision as laid down in Article 22 of the Bengal Electoral Regulations. That there were some irregularities committed at the polling stations presided over by Babu Debendra Nath Bose and the Hon'ble S. K. Sinha can admit of no doubt. Deben Babu has admitted that the marking of the ballot papers was done in such a way that it could be seen by other people if they wanted to see, and the Hon'ble S. K. Sinha was frank enough to admit that in almost all cases without any discrimination as to whether they were literate he asked the voters whom they wanted to vote for and when the voters gave out the name of the candidate they wanted to vote for, the polling officer himself marked the ballot papers and did all the rest, viz., folding up the ballot papers and putting them into the ballot box himself. As regards the presence of Babu Sidhi Nath Chatterji at the Behala Brahma Samaj polling station and of Babu Kristadhan Mukerji at the polling station at the Behala Vernacular School, we are inclined to think that the Petitioner has suc-

ceedtd in establishing this part of his case. Deben Babu himself has admitted the presence of Sidhi Nath at the Behala Brahma Samaj, and Kristadhan Mukerji's presence at the other polling station has been satisfactorily established by more than one witness examined before us. These two men Sidhi Nath and Kristadhan were neither candidates nor clerks nor agents appointed in writing by either the Petitioner or the Respondent—Debendra Babu the Presiding Officer at the Behala Brahma Samaj, has taken upon himself the responsibility for allowing Sidhi Nath to remain at the polling booth, by saying that he allowed him to stay there for the purpose of identifying the voters. If Debendra Babu allowed Sidhi Nath to remain inside the polling station for the purpose of identifying voters—a power which the Presiding Officer could legitimately exercise under the provisions of Article 27 of the Bengal Electoral Regulations—we do not think the presence of Sidhi Nath Chatterji was in contravention of any of the rules or regulations. But no such thing can be said in the case of Kristadhan Mukerji. As we have said above his presence at the Behala Vernacular School has been established beyond doubt, and the Presiding Officer at that polling station could not say that he had allowed the man to remain there for any legitimate purpose. The findings that we arrive at on issue No. 4 therefore are,

(1) The provisions of Section 12(4) of the Bengal Electoral Rules were not strictly complied with inasmuch as no strict secrecy of voting was observed and there was a certain amount of openness in the recording of votes at the polling stations presided over by the Hon'ble S. K. Sinha and Babu Debendra Nath Bose.

(2) Some of the provisions of article 22 of the Bengal Electoral Regulations were violated at the Behala Vernacular School polling station inasmuch as one Kristadhan Mukerji, a Commissioner of the Behala Municipality was allowed to stay in the inner enclosure of the polling station where he had no authority to remain.

(3) The provisions of articles 27 and 29 of the Bengal Regulations were contravened at polling stations presided over by the Hon'ble S. K. Sinha, inasmuch as the polling officer himself put the cross mark on the ballot paper for almost all the voters irrespective of the fact whether they were literate or illitreate and the polling officer himself folded up the ballot papers and himself put them into the ballot box.

Issue No. 4 is therefore decided substantially in favour of the Petitioner.

Issue No. 5. But the non-compliance with the provisions of Section 12(4) of the Bengal Electoral Rules and of articles 22, 28 and 29 of the Bengal Electoral Regulations will not be of much

avail to the Petitioner, unless it can be shown that the result of the election has been materially affected by such non-compliance. The Petitioner has tried in two ways to show that the non-compliance with the provisions of the rules and regulations has materially affected the result of the election, and we propose now to discuss these two ways one after another. According to Rai Yatindra Nath Choudhri there were some 200 or 300 voters within the Behala Municipality who promised to vote for him on condition that the voting would be secret. And the contention on behalf of the Petitioner has been that inasmuch as the voting was not secret but open, most of those voters who had promised to vote for him on that condition did not dare to vote for the Petitioner, and all those votes were consequently lost to him. There is a considerable amount of force in this argument so far it goes, but there are practically no materials before us which would justify us in holding that if the Petitioner secured only 93 votes in the Behala polling area, that was for no other reason than that there was a certain amount of openness in voting. The Petitioner Rai Yatindra Nath Choudhri is the principal witness on this part of the Petitioner's case and we were much impressed by the way in which the Petitioner gave his evidence in court. But the evidence of Rai Yatindra Nath Choudhri when taken at its full value does not carry us very far in determining the question whether the want of strict secrecy in voting had much to do with the poor support which the Petitioner got from the voters within the Behala Municipality. Rai Yatindra Nath Choudhri in the evidence that he gave before us stated that after the votes had been counted by the Returning Officer, he (the Petitioner) met some of the men who had promised to vote for him and asked them why they had not voted in his favour. But with the exception of one or two who do not prove much these men were not produced before us to give their evidence on the point. Rai Yatindra Nath told us that he had made some attempts to produce these men in court. But the only attempt which he appears to have made was to have given directions to his officers and principally to his manager Nitai Chandra Bahaduri to go to the men and ask them to come and depose in his favour. But it is a significant fact that this manager, Nitai Chandra Bahaduri was not examined before us. We are therefore unable to hold that the non-production of any of these men, we according to Rai Yatindra Nath Choudhri had promised to vote for him on condition that the voting would be secret, in the witness box before us, has been sufficiently explained. And in the absence of the evidence of any of these men we are unable to connect the want of secrecy of voting at the polling stations and the poor support which the Peti-

tioner obtained from the voters of the Behala Municipal Area as cause and effect. There was another way in which it was sought to be established that the result of the election had been materially affected by the non-compliance with rules and regulations. It was urged that the votes were recorded at the polling stations presided over by the Hon'ble S. K. Sinha, should not have been counted at all, inasmuch as there had admittedly been violation of some of the rules and regulations at those two polling stations, the small majority of 269 votes by which Babu Surendra Nath Roy was found to have been elected would altogether disappear. The number of votes that were recorded at these two polling stations was considerably more than 269. But the question for our consideration is whether we can regard those votes as nullity. Article 30 of the Bengal Electoral Regulations is the only enactment under which votes can be rejected as invalid. But there is nothing in this article which lays down that votes are to be held as invalid where secrecy has not been strictly observed; and none of the irregularities which admittedly took place at these two polling stations are to be found anywhere in this article 30. It was contended before us on behalf of the Petitioner that on the question of rejecting votes as invalid we are not to confine ourselves within the provisions made in this article. But this is a contention which we are unable to accept. When the rules and regulations give full instructions on every step that is to be followed in the whole procedure, we do not think that it was the intention of the legislature that we, while sitting as the Commissioners of an election court should go beyond those specific instructions that have been enacted on any particular point. In this view of the matter we are to a considerable extent supported by what their Lordships did in the well-known election case Woodward *v.* Sarsons (L. R. 10, C. P. 733). Their Lordships in that case, while rejecting as invalid the 294 ballot papers which had been marked by the polling officer in such a way that the voters could have been identified, refused to reject as invalid the 20 ballot papers of polling station No. 125 on the ground that although there had been a breach by the Presiding Officer of some directions as given in the rules framed under the Ballot Act, there was no breach for which by any enactment the ballot papers could be rejected. We therefore hold that the ballot papers at the polling stations presided over by the Hon'ble S. K. Sinha cannot be lawful rejected by us, and if they cannot be so rejected, it would be difficult to see how the admitted irregularities committed by the polling officer at these two polling stations can be said to have materially affected the result of the election. Both the contentions therefore fail. The petition is dis-

missed.

In consideration of the fact that there were really some irregularities at some of the polling stations and that there were some breaches of the provisions as laid down in the rules and regulations, we are of opinion that the Petitioner had some reasonable grounds for filing the petition and trying to have the election of the Respondent set aside. And in this view of the matter we should direct that each party bear his own costs.

S. C. MALLICK
BILMANI MUKERJI
NIROD CHANDRA CHATTERJI } *Commissioners*

THE PUNJAB LEGISLATIVE COUNCIL

NAWABZADA MUHAMMAD IRSHAD ALI KHAN
(*Petitioner*)

KHAN BAHADUR MIR MUHAMMAD KHAN (*Respondent*)

Certain voting papers held invalid by the Returning Officer, held valid and *vice versa*.

To constitute a corrupt practice a corrupt motive is essential and unless there is corruption and a bad mind, personation is not an offence.

Where a candidate comes to know of the corrupt acts of his agents but takes no steps to dissociate himself from them, he will be held to 'connive at them'.

Abetment of any of the acts constituting a corrupt practice is itself a corrupt practice, and from this point of view the guilt or innocence of the personator is immaterial.

The election has been called in question by the Petitioner on the grounds that there were numerous cases of personation among the voters of Simla and that certain voting papers were wrongly held invalid by the Returning Officer. He has further claimed a declaration under Punjab Electoral Rule 32 that he himself has been declared duly elected. The Respondent made recriminatory charges against the Petitioner but little evidence was adduced in support of those charges. They have not been pressed in argument.

We shall take up the scrutiny necessitated by the Petitioner's claim to the votes which he alleges were wrongly given to the Respondent owing to personation. Of these 8 have been admitted by the Respondent.

In addition to the above the Petitioner claims as lost to the Respondent a number of other voters, the claim to which is disputed

by the Respondent. These will be dealt with seratim.

Muhammad Azam, P. W. 1, a Government of India official, had a vote but being at Delhi did not vote, and some one else unknown voted in his name. He was voter No. 291 in the Electoral Roll. The Respondent's plea that the parentage of his voter is not given in the Electoral Roll and that there might be some other Muhammad Azam, who was entitled to vote and who actually voted, is rejected. We have it in evidence without rebuttal that there is no other Muhammad Azam in Government service at Simla.

The name of Muhammad Qasim, son of Abdul Aziz, appears twice in the Electoral Roll under Nos. 292 and 307, the only difference between the entries being that the profession in one case is put down as 'Sahukara' and in the other as 'service'. Muhammad Qasim, P. W. 22 states that he only voted once, and acknowledges his signature on the identity voucher belonging to voter No. 292. We have some doubt as to the truth of this denial. But apart from this, we are satisfied that there is here a lost vote. The witness states that there are other persons named Muhammad Qasim in Simla, but he does not know their parentage. In view of these facts we consider that the Respondent, who is intimately acquainted with Simla, should have been able to produce the Mohammad Qasim, if any, who voted as voter No. 292. This he has not done, and without deciding that P. W. 22 actually voted twice, we find that the Electoral Roll Nos. 292 and 307 relate to the same man: consequently the vote given in the name of voter No. 292 is lost.

Habib, P. W. 25, was not a voter, but voted in the name of some voter, probably No. 66 in the Electoral Roll. We believe the evidence to the effect that it was this witness who voted, and hold that the vote given is a lost one.

In the Electoral Roll under No. 279 appears the name of Muhammadi, no parentage, aged 40, profession shopkeeping. Uuder No. 296 is another Muhammadi, son of Salaru, aged 40, profession shopkeeping. Both voted. Muhammadi, P. W. 26, says that Salaru is his uncle, but has no son that he, the witness voted. He cannot identify the thumb mark on the identity vouchers of either voter, and the Phillaur expert says that neither is of the same type as the witness's. We are inclined to think that the witness did not vote, and further are not disposed to think it proved that there is no other Muhammadi in Simla. The only point upon which we credit this witness is when he says that Salaru is his uncle and has no son. It is quite unlikely that he would speak falsely in this matter. We hold therefore that the witness is the voter entered as No. 296 in the Electoral Roll, that he did not vote; but that some one else voted for him. One vote is thus lost.

INDEX

Printed by K. P. Dar, at the Allahabad Law Journal Press, Allahabad
Published by Eastern Law House, Calcutta